

Deed of Amendment and Restatement

relating to

a trust deed dated 12 November 2002

Fletcher Building Industries Limited

Issuer of Capital Notes

and

Fletcher Building Limited

Guarantor of Capital Notes and Issuer of Fletcher Building Shares on
conversion

and

Corporate Trust Limited trading as Foundation Corporate Trust

Trustee for Noteholders

Date *12 November* 2015

BELL GULLY

AUCKLAND VERO CENTRE 48 SHORTLAND STREET

PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND

TEL 64 9 916 8800 FAX 64 9 916 8801

This **Deed** is made on 12 November 2015

between (1) Fletcher Building Industries Limited (FBIL)
 and (2) Fletcher Building Limited (FBL)
 and (3) Corporate Trust Limited trading as Foundation Corporate Trust (the Trustee)

Introduction

- A. The parties are parties to the Trust Deed.
- B. On 27 June 2014 the parties entered into a Deed of Consolidation and Restatement to record the form of the consolidated Trust Deed.
- C. The parties have agreed to amend and restate the Trust Deed in the form set out in the Schedule to this Deed, pursuant to clause 8.5(d) of the Trust Deed.

It is declared

1. Interpretation

1.1 Adoption of Trust Deed terms

Unless the context otherwise requires, terms defined or construed in the Trust Deed have the same definition or construction when used in this Deed.

1.2 Definitions

In this Deed, unless the context otherwise requires:

Trust Deed means the trust deed between FBL, FBIL and the Trustee originally entered into on 12 November 2002 and amended or supplemented by a Supplemental Trust Deed dated 21 November 2008, a Supplemental Trust Deed dated 16 March 2009, a Supplemental Deed dated 15 March 2012, an Amendment Deed dated 27 August 2012 and a Supplemental Deed dated 22 February 2013.

Headings are to be ignored in construing this Deed.

2. Amendment and restatement

Each of FBIL, FBL and the Trustee agrees that with effect from the date of this Deed:

- (a) the Trust Deed is amended and restated in the form set out in the Schedule to this Deed; and
- (b) references in the Trust Deed to "*this Deed*" shall be references to the Trust Deed as amended and restated by this Deed.

3. Miscellaneous

3.1 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

3.2 Delivery

For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by each of the parties (each a **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the relevant Delivering Party, into the custody of the other parties or the other parties' solicitors; or
- (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised in writing by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to the other parties or the other parties' solicitors.

3.3 Entire agreement

This Deed constitutes the entire agreement between the parties in relation to the amendment and restatement referred to in clause 2.


3.4 Governing law

This Deed is governed by and is to be construed in accordance with New Zealand law.

Execution

Executed and delivered as a Deed.

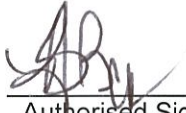
FLETCHER BUILDING
INDUSTRIES LIMITED by:



Authorised Signatory

Charles Bolt

Print Name



Authorised Signatory

Robert Gerard Bollman

Print Name



Witness Signature

Giltan Margaret WILLIAMS

Print Name

Lawyer

Occupation

Auckland

Address

FLETCHER BUILDING LIMITED

by:

Authorised Signatory

Charles Bolt

Print Name

Authorised Signatory

Authorised Signatory

Robert Gerard Bollman

Print Name

Witness Signature

Witness Signature

Gillian Margaret Williams

Print Name

Lawyer

Occupation

Auckland

Address

CORPORATE TRUST LIMITED
trading as FOUNDATION
CORPORATE TRUST by:


 Director / Authorised Signatory

MARK PATRICK JEPHSON

Print Name


 Director / Authorised Signatory

MICHAEL REX KNOWLES

Print Name

Witness Signature

WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton

Residential Address: Auckland

Print Name

Occupation: Corporate Trusts Administrator

Signature:



Occupation

Address

The Schedule: Amended and restated agreement

DATED 12 NOVEMBER 2002

FLETCHER BUILDING INDUSTRIES LIMITED
(as Issuer of Capital Notes)

- and -

FLETCHER BUILDING LIMITED
(as Guarantor of Capital Notes and as Issuer of Fletcher Building Shares on conversion)

- and -

CORPORATE TRUST LIMITED trading as FOUNDATION CORPORATE TRUST
(as Supervisor)

TRUST DEED

- relating to -

Issues of Unsecured Subordinated Capital Notes

[Consolidated to reflect amendments and supplements dated 21 November 2008, 16 March 2009, 15 March 2012, 27 August 2012, 22 February 2013 and [•] 2015]

BELL GULLY
SOLICITORS
AUCKLAND & WELLINGTON

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THIS DEED is made as at 12 November 2002

BETWEEN:

- (1) **FLETCHER BUILDING INDUSTRIES LIMITED (AK/1248554 and ARBN 102568178)** (the **Company**);
- (2) **FLETCHER BUILDING LIMITED (AK/110417)** (**Fletcher Building**); and
- (3) **CORPORATE TRUST LIMITED trading as FOUNDATION CORPORATE TRUST** (the **Supervisor**, which expression includes its assigns and successors).

RECITALS:

- A. The Company proposes to issue Capital Notes constituted as provided in this Deed.
- B. Fletcher Building has agreed to guarantee all indebtedness of the Company under this Deed, to provide for the conversion of the Capital Notes into Fletcher Building Shares in certain circumstances and to refrain from paying dividends or making other Distributions on Fletcher Building Shares for so long as any interest on the Capital Notes is unpaid, and accordingly has agreed to become a party to this Deed and the Capital Notes.
- C. The Supervisor has agreed to act as supervisor on behalf of the Noteholders of the Capital Notes on the terms and conditions of this Deed.
- D. The Capital Notes are unsecured subordinated indebtedness of the Company and the Guaranteed Indebtedness is unsecured subordinated indebtedness of Fletcher Building. The claims of the Noteholders will, in a Liquidation of the Company, rank ahead of Fletcher Building as shareholder of the Company and, in a Liquidation of Fletcher Building, rank ahead of shareholders of Fletcher Building, but behind the claims of all other creditors of the Company or Fletcher Building, as applicable, (in each case, other than any such creditors who specifically agree or it is intended that their claims shall nevertheless rank equally or behind the claims of holders of Capital Notes).

NOW THIS DEED WITNESSES:

1. INTERPRETATION, AMENDMENT AND RESTATEMENT

1.1 Definitions: In this Deed, unless the context otherwise requires:

"Capital Notes" means the Initial Capital Notes or the Further Capital Notes, or both, as the context requires and which are for the time being outstanding;

"Company" means Fletcher Building Industries Limited, a company incorporated under the Companies Act 1993, previously known as Fletcher Building Finance Limited;

"Conditions" means in relation to:

- (a) the Initial Capital Notes, the terms and conditions from time to time applicable to such Capital Notes as set out in Schedule 1 and Schedule 2, as modified from time to time in accordance with this Deed; and
- (b) any Further Capital Notes, the terms and conditions applicable to such Further Capital Notes as set out or referred to in the relevant Supplemental Deed, as modified from time to time in accordance with this Deed and any reference in this Deed to a particular numbered Condition, shall, in relation to any Further Capital Notes, be construed as a reference to the provisions (if any) in the Conditions thereof which correspond to those of the particular numbered Condition of the Initial Capital Notes;

"Distribution" has the meaning ascribed to it in section 2 of the Companies Act 1993;

"Election Date" in relation to:

- (a) the Initial Capital Notes, has the meaning set out in Schedule 1; and
- (b) any Further Capital Notes, has the meaning set out in the relevant Supplemental Deed;

"FMA" means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011;

"FMCA" means the Financial Markets Conduct Act 2013;

"FMC Regulations" means the Financial Markets Conduct Regulations 2014;

"FASTER Transaction Statement" means the FASTER Transaction Statement referred to in Condition 5.4 of Schedule 2;

"First Interest Date" in relation to:

- (a) the Initial Capital Notes, has the meaning set out in Schedule 1; and
- (b) any Further Capital Notes, has the meaning set out in the relevant Supplemental Deed;

"Fletcher Building Capital Notes" means capital notes issued by Fletcher Building pursuant to a trust deed dated 24 September 2001 between Fletcher Building as issuer and Perpetual Trust Limited as trustee (or any supplemental deed thereto) for the time being outstanding;

"Fletcher Building Shares" means ordinary shares in the capital of Fletcher Building for the time being on issue (as such shares may from time to time be subdivided, consolidated or reclassified after the date of this Deed) and into which the Capital Notes are convertible in accordance with the Conditions;

"Further Capital Notes" means the indebtedness of the Company constituted by a Supplemental Deed entered into after the date of this Deed pursuant to clause 2.2 or the amount thereof for the time being outstanding and includes the relevant Conditions applicable to such further capital notes;

"Guaranteed Indebtedness" means all indebtedness of the Company to the Supervisor or to the Noteholders under this Deed in respect of the Capital Notes;

"Initial Capital Notes" means the capital notes to be offered by the Company for subscription pursuant to a prospectus and investment statement dated on or about 15 November 2002, constituted by this Deed and which are for the time being outstanding and includes the relevant Conditions applicable to such capital notes;

"Interest Date" in relation to:

- (a) the Initial Capital Notes, has the meaning set out in Schedule 1; and
- (b) any Further Capital Notes, has the meaning set out in the relevant Supplemental Deed;

"Interest Rate" in relation to:

- (a) the Initial Capital Notes, has the meaning set out in Schedule 1; and
- (b) any Further Capital Notes, has the meaning set out in the relevant Supplemental Deed;

"Liquidation" in relation to the Company or Fletcher Building means the dissolution or liquidation of the Company or Fletcher Building, as applicable, in its jurisdiction of incorporation and any other analogous proceedings whereby the Company or Fletcher Building, as applicable, may, at the conclusion of such proceedings, cease to be duly

incorporated or validly existing in its jurisdiction of incorporation, except for the purpose of and followed by a reconstruction or amalgamation (not involving or arising out of insolvency) of the Company or Fletcher Building, as applicable, provided that, upon such reconstruction or amalgamation, the successor to substantially the whole of the business and assets of the Company or Fletcher Building, as applicable, or the acquirer of substantially all of the voting shares of the Company or Fletcher Building, as applicable, enters into a deed supplemental to this Deed under which the obligations of the Company or Fletcher Building, as applicable, under this Deed and the Capital Notes are assumed by such successor or such acquirer mutatis mutandis subject only to any consequential or other modification thereto as the Supervisor considers appropriate;

"Liquidation Amount" has the meaning ascribed thereto in Condition 2.2(b) of Schedule 2;

"Liquidator" means any official in whom management of a company may become vested for the purpose of liquidating its assets and repaying (in so far as is possible) its debts and administering to the eventual cessation of its business and its valid existence;

"New Terms" has the meaning given to it in Condition 4.1 of Schedule 2;

"Noteholders" means the persons whose names are from time to time entered in the Register as the holders of the Capital Notes;

"Principal Amount" means, in relation to a Capital Note, the principal amount of such Capital Note entered in the Register;

"Proxy Closing Time" means 48 hours before the time appointed for commencement of the relevant meeting of Noteholders or the taking of a poll of Noteholders;

"Register" means the register (or registers) of Capital Notes to be kept pursuant to this Deed;

"Registrar" means the registrar from time to time appointed by Fletcher Building in respect of Fletcher Building Shares in New Zealand, or such other person as may be appointed by the Company to maintain the Register;

"Senior Creditors" in relation to the Company or Fletcher Building, means creditors of the Company or Fletcher Building, as applicable, who:

- (a) in any Liquidation of the Company or Fletcher Building, as applicable, are creditors whose right to repayment is not subject to any subordination; or
- (b) are subordinated creditors of the Company or Fletcher Building, as applicable, other than those whose claims (including the claims of holders of the Fletcher Building Capital Notes) rank, or are intended or expressed to rank, *pari passu* with, or subordinate to, the claims of the Noteholders;

"Series" means, in relation to each issue of Further Capital Notes, all Capital Notes forming part of the relevant issue which have the same terms in all material respects;

"Special Resolution" means a resolution approved by Noteholders holding Capital Notes with a combined nominal value of no less than 75% of the nominal value of the Capital Notes held by those persons who are entitled to vote and who vote on the question;

"Stock Exchange" means the New Zealand Stock Exchange (and includes any alternative or substitute market for Fletcher Building Shares or other arrangement in New Zealand on or through which Fletcher Building Shares may be freely traded and which is generally regarded as the principal such market or arrangement for the trading of Fletcher Building Shares in New Zealand);

"Supplemental Deed" means a deed supplemental to this Deed under which any Further Capital Notes are constituted; and

"Unpaid Interest" has the meaning ascribed thereto in Condition 3.2 of Schedule 2.

1.2 **Interpretation:** In this Deed, unless the context otherwise requires, references to:

- (a) a business day is to a day (other than a Saturday) on which registered banks are open for general banking business in Auckland and Wellington, while "working days" shall have the meaning set out in the Interpretation Act 1999;
- (b) Schedules, clauses and paragraphs are to the schedules, clauses and paragraphs of this Deed;
- (c) "this Deed" includes the Schedules and any Supplemental Deed or other deed supplemental hereto and the schedules (if any) thereto, all as from time to time modified in accordance with the provisions herein or therein contained;
- (d) the singular includes the plural and vice versa;
- (e) a gender includes all other genders;
- (f) the "commencement of the Liquidation" in respect of the Company or Fletcher Building are to the day on which an order is made or effective resolution passed or other analogous proceedings are commenced for the Liquidation of the Company or Fletcher Building, as applicable;
- (g) "persons" includes a firm, trust, corporation or other legal entity whether corporate or unincorporated;
- (h) a statute includes any regulations or orders made under it, any amendment or re-enactment of it, and any statute enacted in substitution for it; and
- (i) any person includes its successors and permitted assigns.

The headings are for ease of reference only and shall not affect the construction of this Deed.

1.3 **Definitions in Conditions:** Words and expressions defined in the Conditions and not otherwise defined in this Deed shall, unless the context otherwise requires, have the same meanings where used in this Deed.

1.4 **Non-Business Days:** Unless otherwise specified, anything which is required by this Deed or the Conditions to be done on, or as of, a day which is not a business day shall be done on, or as of, the next business day.

1.5 **Securities Regulations:** The provisions required to be incorporated in all trust deeds (as defined in the Securities Act 1978) under regulation 39A of the Securities Regulations 2009 ("Securities Regulations") are set out or described in Schedule 4.

1.6 **FMC Regulations:** This Deed is treated as containing any provision that is implied into it by or under the FMC Regulations or the FMCA.

2. THE CAPITAL NOTES

2.1 **Constitution of Capital Notes:** The Company may issue Capital Notes from time to time in accordance with, and to be constituted pursuant to, this Deed.

2.2 Supplemental Trust Deeds

The Company may, from time to time (but subject to this Deed), without the consent of the Noteholders or Fletcher Building and without prejudice to the guarantee contained in clause 4:

- (a) deem to be constituted as Further Capital Notes, existing indebtedness for which the Company becomes or has become liable; and

- (b) create new indebtedness as Further Capital Notes, either:
 - (i) ranking pari passu with the Initial Capital Notes in all respects (or in all respects except for the Interest Rate, Interest Dates and the Election Date) so as to form a single issue with the Capital Notes, or
 - (ii) upon such other terms as to interest rates or payment dates, conversion, ranking (whether in a Liquidation or otherwise), premium and otherwise as the Company may determine at the time of issue.

Any such existing or new indebtedness deemed to be constituted, or created, as Further Capital Notes under clauses (a) and (b) above shall be constituted by a Supplemental Deed.

- 2.3 **Conditions of Issue:** Each Capital Note shall be issued subject to the applicable Conditions. The Conditions applicable to the Initial Capital Notes are set out in Schedule 1 and Schedule 2. The Conditions applicable to Further Capital Notes shall be set out or referred to in the relevant Supplemental Deed.
- 2.4 **Conditions and this Deed Binding:** The Conditions relevant to the Capital Notes and this Deed shall be binding on the Company, Fletcher Building, the Supervisor, the Noteholders and all persons claiming through or under them respectively and the Capital Notes shall be held subject thereto.
- 2.5 **Form of Capital Notes:** Capital Notes will be issued in uncertificated book entry form by entry of the details specified in clause 5.2 on the Register.
- 2.6 **Covenant to Observe the Trust Deed and Conditions:**
 - (a) Each of the Company and Fletcher Building covenant with the Supervisor that it will comply with, perform and observe all the provisions of this Deed and the Conditions which are expressed to be binding on it.
 - (b) Every payment in respect of the Capital Notes duly made to the Noteholders, and every conversion of Capital Notes into Fletcher Building Shares duly made in accordance with the Conditions, shall be in satisfaction pro tanto of the relevant obligation to the Supervisor under this Deed of the relevant party.
 - (c) The Supervisor shall take and hold the benefit of the covenants given to it by the Company and Fletcher Building under this Deed in respect of the Capital Notes for the Noteholders generally.
- 2.7 **Noteholder Absolute Owner:** The parties shall, notwithstanding any notice to the contrary, be entitled to treat the Noteholder of any Capital Note as its absolute and beneficial owner and shall not be required to recognise any trust or equity affecting such ownership (except as required by law or order of any competent court).
- 2.8 **Redemption, Purchase or Conversion:** All Capital Notes which are converted into Fletcher Building Shares or redeemed in accordance with this Deed shall be cancelled and neither the Company, Fletcher Building nor the Supervisor will have any further liabilities or obligations in respect of those Capital Notes or to the relevant Noteholders. The Company, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) may at any time purchase Capital Notes for its own account. In respect of any Capital Notes so purchased by the Company, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) the Company may at any time:
 - (a) cancel or transfer those Capital Notes as the Company elects: or
 - (b) amend the Election Date, Interest Rate and Interest Date so as to align the Capital Notes so purchased with any other Capital Notes then on issue by written notice to the Supervisor setting out the details of the proposed amendments, details of the Capital Notes currently on issue in respect of which the purchased Capital Notes will be aligned, the date on which the amendments are to take

effect (which date shall not be earlier than 5 business days after receipt of notice by the Supervisor) and such other information as the Supervisor may reasonably request.

If cancelled, none of the Company, Fletcher Building or the Supervisor will have any further liabilities or obligations in respect of those Capital Notes or to the relevant Noteholders.

- 2.9 **Unclaimed Payments:** If any payment made by the Company or Fletcher Building to any Noteholder at its address last entered in the Register is returned unclaimed and the amount concerned has not been claimed by the person entitled thereto within 12 months thereafter, the amount concerned shall (unless the Company has in the meantime received notice of a change of address to be entered in the Register) be paid to the Supervisor to be held by it for the Noteholder concerned without any liability to invest or pay interest on that amount. Unless otherwise required by law, any money not so claimed within a period of six years from the original date of payment shall be returned to the Company or Fletcher Building, as applicable, together with interest (if any) thereon, and the Company or Fletcher Building, as applicable, shall have no further liability in respect of the amount concerned.
- 2.10 **Reinstatement:** If any payment made to the Supervisor or to any Noteholder by, or on behalf of, the Company or Fletcher Building is avoided by law such payment shall be deemed not to have discharged or affected the liability of the Company or Fletcher Building, as applicable, in respect of which that payment was made. In that event the Supervisor, the Noteholders, the Company and Fletcher Building shall be restored to the position in which each would have been, and be entitled to exercise all the rights which each would have had, if such payment had not been made.
- 2.11 **Taxation Indemnity of Noteholder:** Whenever, in respect of any Capital Notes, there shall by law be imposed any liability on the Supervisor, the Company or Fletcher Building to make any payment of or on account of tax payable by the Noteholder, the Supervisor, the Company and Fletcher Building respectively shall in respect of such liability be indemnified by such Noteholder and the personal representatives of such Noteholder and in the case of the Supervisor alternatively by the Company and Fletcher Building (in respect of which the Company and Fletcher Building shall in turn be indemnified as aforesaid) and any moneys paid by the Supervisor, the Company or Fletcher Building in respect of any such liability may be recovered by action from such Noteholder and the personal representatives of such Noteholder, the Company or Fletcher Building, as applicable as a debt due to the Supervisor, the Company or Fletcher Building, as applicable. Nothing herein contained shall prejudice or affect any other right or remedy of the Supervisor, the Company or Fletcher Building.
- 2.12 **Ranking with Fletcher Building Capital Notes:** Fletcher Building agrees that its obligations under the guarantee to the Noteholders contained in clause 4 of this Deed are intended to, and shall, rank *pari passu* with its obligations to the holders of the Fletcher Building Capital Notes, except to the extent expressly provided in the terms and conditions relating to any Fletcher Building Capital Notes.
- 2.13 **Consolidation:** The Company may, by written notice to the Supervisor, at any time, consolidate into a single Series, one or more Series of Capital Notes which are the same in all material respects other than the date of issue.

3. SUBORDINATION AND STATUS OF CAPITAL NOTES

3.1 Status of Capital Notes:

- (a) Subject to clause 2.2(b), all Capital Notes shall rank *pari passu* and without priority or preference amongst themselves except in respect of the Interest Rate, Interest Dates and Election Date (each as defined in the relevant Conditions).

- (b) Nothing in this Deed shall, prior to the commencement of the Liquidation of the Company or Fletcher Building, in any way restrict the right of the Company or Fletcher Building to incur indebtedness or issue obligations ranking in priority to, or pari passu with, or subordinate to, the indebtedness and obligations of the Company or Fletcher Building, as applicable, in respect of the Capital Notes. If any modification to this Deed, or any other documentation, consent or acknowledgment, is necessary or expedient to permit, facilitate or give effect to such ranking the Supervisor is authorised and directed to concur with the Company and Fletcher Building in executing the same and any such concurrence shall be on behalf of, and shall bind, the Noteholders.
- 3.2 **Subordination of Capital Notes:** The Capital Notes shall be subordinated in point of priority and right of payment as provided in Condition 2.2(a) of Schedule 2.
- 3.3 **Priority:** The Supervisor agrees, and, by purchasing a Capital Note, each Noteholder will be deemed to agree that:
 - (a) in accordance with section 313(3) of the Companies Act 1993, he or she is accepting a lower priority in respect of the debt represented by such Capital Note or Guaranteed Indebtedness than that which it would otherwise have under section 313; and
 - (b) nothing in section 313 of the Companies Act 1993 will prevent this Deed from having effect in accordance with its terms.
- 3.4 **No Subordination of Supervisor's Entitlement:** Nothing in this Deed or the Conditions shall:
 - (a) subordinate or otherwise affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Supervisor, or the rights and remedies of the Supervisor in respect thereof; or
 - (b) oblige the Supervisor to acknowledge any personal liability to pay any amount which has not first been received by the Supervisor in its capacity as Supervisor under this Deed, and any such liability shall cease in respect of any amount so received and disbursed by the Supervisor in good faith in the reasonable belief that the disbursement is authorised under this Deed.
- 3.5 **No Enforcement by Supervisor or Noteholders:**
 - (a) Neither the Supervisor nor any Noteholder shall be entitled to ask, demand, sue or prove for, take or receive, directly or indirectly, whether by exercise of set-off, counterclaim or in any other manner any payment of or in respect of:
 - (i) the Capital Notes from the Company except after the commencement of the Liquidation of the Company (whether or not Fletcher Building is also in Liquidation); or
 - (ii) the Guaranteed Indebtedness from Fletcher Building except after the commencement of the Liquidation of Fletcher Building (whether or not the Company is also in Liquidation),
 and then, in the case of a Noteholder, only as may be necessary to preserve the claim thereto of such Noteholder in such Liquidation.
 - (b) Notwithstanding paragraph (a) of this clause, after the commencement of the Liquidation of the Company or Fletcher Building, as applicable, any amount, other than a payment by the Supervisor pursuant to clause 3.8(c), which a Noteholder may receive on account of the Capital Notes, whether in or upon the Liquidation of the Company or Fletcher Building, as applicable, or for any other reason whatsoever, shall be paid to the Company or Fletcher Building, as applicable, to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of the Company or Fletcher Building, as applicable, to the relevant

Senior Creditors according to their respective rights and interests and, pending payment thereof to the Company or Fletcher Building, as applicable, any such amount received by a Noteholder shall be held by the Noteholder on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid.

- (c) If, whether before or after the commencement of the Liquidation of the Company or Fletcher Building, and notwithstanding paragraphs (a) and (b) of this clause, a Noteholder becomes entitled to, or does, exercise any right of set-off, counterclaim or other such remedy in respect of any amount owing by the Noteholder to the Company or Fletcher Building, as applicable, the Noteholder will pay to the Company or Fletcher Building, as applicable, an amount equal to the amount in respect of which such right is exercised, such amount to be held by the Company or Fletcher Building, as applicable, upon the trusts specified in paragraph (b) of this clause and, pending payment thereof to the Company or Fletcher Building, as applicable, the Noteholder shall hold such amount on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid.

3.6 Contracts (Privity) Act 1982:

- (a) For the purposes of the Contracts (Privity) Act 1982, but subject to (b) below, this clause 3 is intended to confer a benefit upon, and be enforceable by, the Senior Creditors of each of the Company and Fletcher Building directly.
- (b) For the purposes of section 6 of the Contracts (Privity) Act 1982, it is agreed that any amendments made to this Deed in accordance with clause 9 shall be binding upon Senior Creditors of each of the Company and Fletcher Building whether or not they have consented to such amendment.

3.7 Liquidation of Company: No Noteholder shall claim or prove in the Liquidation of the Company or Fletcher Building for any amount owing to such Noteholder under any Capital Note or this Deed to the extent that the Supervisor has claimed or proved for, or has determined to claim or prove for, such amount in such Liquidation on behalf of such Noteholder, and any claim or proof made contrary to this clause 3.7 shall be withdrawn by such Noteholder.

3.8 Distribution on Liquidation: Any amount received by the Supervisor under or in respect of this Deed or the Capital Notes in or upon any Liquidation of the Company or Fletcher Building shall be applied, and pending such application shall be held by the Supervisor upon trust to be applied:

- (a) First, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor and of all remuneration and other moneys payable to the Supervisor as provided in this Deed;
- (b) Secondly, in payment to the Company or Fletcher Building, as applicable, to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of the Company or Fletcher Building, as applicable, to the Senior Creditors of the Company or Fletcher Building, as applicable, according to their respective rights and interests and, pending payment thereof to the Company or Fletcher Building, as applicable, any such amount received by the Supervisor shall be held by it on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid;
- (c) Thirdly, subject to the indebtedness of the Company or Fletcher Building, as applicable, to the Senior Creditors of the Company or Fletcher Building, as applicable, having been paid or satisfied or provided for in full (for which purpose the Supervisor may rely upon any written advice from the Liquidator of the Company or Fletcher Building, as applicable) and subject to the claims of creditors of the Company or Fletcher Building, as applicable, whose claims (including the claims of holders of the Fletcher Building Capital Notes) rank, or are intended or

expressed to rank, pari passu with the claims of the Noteholders, in or towards payment to the Noteholders, pari passu in proportion to the Principal Amounts of the Capital Notes held by the respective Noteholders, of the aggregate Liquidation Amounts in respect of the Capital Notes held by each Noteholder; and

- (d) Fourthly, in payment of the surplus (if any) of such moneys to the Company or Fletcher Building, as applicable, or to such other person as may be lawfully entitled thereto.

- 3.9 **Payments to Liquidator of Company or Fletcher Building:** At any time after the commencement of the Liquidation of the Company or Fletcher Building, as applicable, the Supervisor and any Noteholder may satisfy its obligations under clause 3.5 and, in the case of the Supervisor, under paragraphs (b) and (c) of clause 3.8, by paying any amounts referred to in such provisions to the Liquidator of the Company or Fletcher Building, as applicable, with instructions to the Liquidator to effect such application as is required by such provisions, and any such payment shall be a complete discharge of such obligations.
- 3.10 **Termination of Trusts:** The trusts contained in this Deed in favour of the Senior Creditors of each of the Company and Fletcher Building shall terminate on the date which is 80 years after the date of execution of this Trust Deed, except to the extent that any interests under such trusts have vested at that date and without affecting the contractual rights and obligations of the Company, Fletcher Building and the Supervisor hereunder, and any amounts which would, but for this provision, have been held on trust for the Senior Creditors of the Company or Fletcher Building shall be held on trust for the Company or Fletcher Building, as applicable, absolutely.
- 3.11 **Permitted payments and receipts:** Until the commencement of the Liquidation of the Company or Fletcher Building, the Company or Fletcher Building, as applicable, is entitled to pay and a Noteholder or the Supervisor is entitled to receive payment from or on behalf of the Company or Fletcher Building, as applicable, of any amount payable under this Deed or in respect of the Capital Notes and the Supervisor is entitled to pay any amounts to or for the benefit of the Noteholders. The payment and receipt prior to the commencement of the Liquidation of the Company or Fletcher Building of any such amount by the Company or Fletcher Building, as applicable, will not constitute a breach of, or be subject to, clause 3.2 and such payment is to be received free of any obligation on the recipient of that payment to refund or return the same, or to hold the same in trust, in accordance with this Deed.

4. GUARANTEE AND INDEMNITY

4.1 Guarantee

Subject to the provisions of clause 3, Fletcher Building unconditionally and irrevocably guarantees to the Supervisor (in its own capacity and in its capacity as supervisor on behalf of Noteholders) the due payment by the Company of the Guaranteed Indebtedness in accordance with the provisions of this Deed. Fletcher Building covenants with the Supervisor that this guarantee constitutes a direct, unconditional and unsecured obligation of Fletcher Building, which is subordinated in the manner provided in clause 3 and ranks equally with the Fletcher Building Capital Notes in accordance with clause 2.12.

4.2 Payment

Fletcher Building undertakes that if, for any reason, the Company does not pay any Guaranteed Indebtedness in accordance with the terms of this Deed, it will, subject to clause 3, pay the relevant amount within two business days of receiving a demand by the Supervisor.

4.3 Liability as sole principal debtor

As between Fletcher Building and the Supervisor (but without affecting the obligations of the Company) Fletcher Building is liable under this Deed as a sole and principal debtor and not as a surety.

4.4 No discharge

Fletcher Building is not to be discharged, nor are its obligations to be affected, by anything which, but for this clause 4, would or might have discharged it or affected its obligations, including:

- (a) time, indulgence, waiver or consent whenever given to the Company or another person; or
- (b) an amendment to this Deed, or to the Conditions, or to another security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase its liability under this Deed or otherwise); or
- (c) the making of, or failure to make, a demand on the Company or another person for payment; or
- (d) the failure to obtain, or the failure of a person to execute or otherwise be bound by, this Deed or another security interest, guarantee, indemnity or other agreement; or
- (e) the enforcement of, or failure to enforce, this Deed or another security interest, guarantee, indemnity or other agreement; or
- (f) the release of, or the release of the Company from, this Deed or a security interest, guarantee, indemnity or other agreement (other than the release of Fletcher Building pursuant to clause 4.6); or
- (g) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Company or another person (or the commencement of steps to effect the same); or
- (h) the illegality, invalidity, unenforceability of, or defect in, a provision of this Deed or the Company's obligations under any of them for any reason whatsoever, and whether or not known to the Supervisor; or
- (i) the substitution of the Company or the transfer of the domicile of the Company pursuant to clause 12; or
- (j) any other matter or thing whatsoever.

As a separate and continuing undertaking, Fletcher Building unconditionally and irrevocably undertakes to the Supervisor that, should any Guaranteed Indebtedness not be recoverable for any reason (including without limitation those set out under paragraphs (a) – (j) above), Fletcher Building will, subject to clause 3, pay to the Supervisor within two business days of receiving a demand the amount which the Supervisor would otherwise have been able to recover. In this clause 4, the expression "Guaranteed Indebtedness" includes any indebtedness which would have been included in that expression but for anything referred to in this clause 4.4.

4.5 Continuing guarantee

Fletcher Building's obligations under this Deed:

- (a) are by way of continuing security; and
- (b) are in addition to, are not to be merged in any security interest, guarantee, indemnity or other agreement, held by the Supervisor.

4.6 Discharge of guarantee

The Supervisor will, upon being satisfied that no moneys are actually or contingently owing under this Deed or that there are no Capital Notes outstanding, other than Capital Notes held by Fletcher Building or any subsidiary of Fletcher Building, execute at the cost of the Company a discharge of the obligations of Fletcher Building contained in this clause 4 whenever requested by the Company so to do, but any such discharge will be without prejudice to any indemnity given in favour of the Supervisor for any unremedied breach or unperformed obligation of Fletcher Building under this Deed.

- 4.7 **Suspense Account:** All moneys from time to time received by the Supervisor in respect of the Guaranteed Indebtedness from or on account of Fletcher Building may be placed in a suspense account with a view to preserving the rights of the Supervisor on behalf of the Noteholders to prove for the whole of the Guaranteed Indebtedness in the event of the Liquidation of Fletcher Building.
- 4.8 **Waiver of Fletcher Building's rights:** Fletcher Building hereby waives presentment, filing of claims with a court in the event of the Liquidation of the Company, any right to require proceedings first against the Company and any requirement of protest or notice with respect to the Capital Notes or the Guaranteed Indebtedness.

5. THE REGISTER

- 5.1 **Obligation to Maintain Register:** The Company shall cause the Registrar to maintain the Register.
- 5.2 **Entries in Register:** There shall be entered in the Register the number of Capital Notes for the time being issued, the names and addresses, and the holdings of Capital Notes, of the Noteholders, the date on which such names are entered on the Register, the Issue Date, relevant Interest Dates and Election Date, all transfers or changes of ownership of Capital Notes and all cancellations of Capital Notes and such other information (if any) required under section 217 of the FMCA.
- 5.3 **Change of Registered Address:** Any change of name or address of any Noteholder shall forthwith be notified to the Registrar in writing by the Noteholder, or if a joint holding by all the joint Noteholders, and the Register shall be altered accordingly.
- 5.4 **Inspection of Register:** The Register shall be open for inspection, and for the purposes of taking copies thereof, or an extract therefrom, in accordance with the requirements of sections 221 to 225 of the FMCA.
- 5.5 **Closure of Register:** Subject to clause 5.6, the Company may, from time to time, on giving notice by advertisement in a newspaper circulating in the district in which the Register is maintained, close the Register for any period or periods not exceeding, in aggregate, thirty days in any one year.
- 5.6 **Legal Requirements:** The Company shall comply or procure compliance with all statutory requirements in respect of the Register, including under Subpart 4 of Part 4 of the FMCA.
- 5.7 **Audit:** The Register shall be kept by the Company and shall be audited in accordance with the requirements of section 218 of the FMCA (including clauses 108 and 109 of the FMC Regulations).
- 5.8 **Register Conclusive:** The Supervisor, the Company and Fletcher Building shall:
- (a) be entitled to rely upon the entries in the Register as constituting the sole and conclusive record of all Capital Notes and as to the persons entitled to the Capital Notes (being Noteholders);

- (b) not be obliged to make further enquiry as to the status in relation to this Deed, or ownership, of any securities or indebtedness of the Company or Fletcher Building not so entered in the Register;
- (c) not be deemed to have accepted:
 - (i) any liability for failure to make enquiry as is referred to in (b) above; and
 - (ii) any supervisory role for the Noteholders of, or in respect of, securities or indebtedness not entered in the Register; and
- (d) have power, in their absolute discretion, to authorise the correction of the Register upon being satisfied that the Register is incorrect, and to be deemed to have accepted a supervisory role in respect of Capital Notes and the Noteholders thereof as shown by the Register so corrected as from such date as the Supervisor shall determine.

5.9 No liability for FASTER Trading: The Supervisor, the Company and Fletcher Building shall not be liable to the Company, Fletcher Building or any Noteholder or former Noteholder for accepting as valid any transfer of a Capital Note in accordance with any system referred to in Condition 5.1 of Schedule 2.

6. WARRANTIES AND COVENANTS

6.1 Representations and Warranties: The Company and Fletcher Building each represents and warrants to the Supervisor that:

- (a) it is a company duly incorporated under the laws of its jurisdiction of incorporation;
- (b) it has power to enter into this Deed and (in the case of the Company) issue the Capital Notes and to perform its obligations hereunder and (in the case of the Company) thereunder;
- (c) it has all necessary consents and has taken all necessary corporate and other action to authorise the execution and performance of this Deed and (in the case of the Company) the Capital Notes;
- (d) its obligations under this Deed and (in the case of the Company) the Capital Notes are legally binding and enforceable, subject as to the enforcement of remedies, to general equitable principles and to bankruptcy, insolvency or similar laws affecting creditors generally; and
- (e) the execution and performance by it of its obligations under this Deed and (in the case of the Company) the Capital Notes do not violate in any respect any applicable provision of any law, decree or regulation of any governmental or other authority, agency or Court to which it is subject, or any of its constitutional documents, or any agreement, charge or other instrument to which it is a party or which is or may be binding on it or any of its assets.

6.2 Company Covenants: For so long as any Capital Notes are outstanding, the Company covenants with the Supervisor that it will:

- (a) if it has reasonable grounds to believe that it has contravened, may have contravened, or is likely to contravene, any of its issuer obligations (as defined in the FMCA) in a material respect, as soon as practicable:
 - (i) report the contravention or possible contravention to the Supervisor; and
 - (ii) advise the Supervisor of the steps (if any) that the Company has taken or intends to take in light of the contravention or possible contravention and the date by which the steps were taken or are to be taken;

- (b) if it becomes aware of information on the basis of which it could reasonably form the opinion that the Company is, or is likely to become, insolvent (as defined in the FMCA), as soon as practicable:
 - (i) disclose to the Supervisor all information relevant to that matter that is in the possession, or under the control, of the Company and that was obtained in the course of, or in connection with, the performance of its functions as issuer of the Capital Notes; and
 - (ii) advise the Supervisor of the steps (if any) that the Company intends to take in respect of that matter and the date by which the steps are to be taken;
- (c) send copies to the Supervisor of all notices given by it to Noteholders generally and, in particular, send copies to the Supervisor of any notices and communications that any Noteholder is entitled to receive in relation to any meeting of Noteholders;
- (d) not at any time while there is any Unpaid Interest pay any dividend on, or make any other Distribution in respect of, its ordinary shares;
- (e) whenever so requested, give to the Supervisor or any person authorised by the Supervisor to receive it, such information as may reasonably be required with respect to all matters necessary for the purpose of the discharge of the duties, trusts and powers vested in the Supervisor under this Deed or imposed upon it by law (including without limitation, any information or reports under section 115 of the FMCA), and for this purpose the Company will procure and facilitate the provision of information to the Supervisor by the auditors of the Company under the procedures contemplated by sections 198 and 199 of the FMCA or section 50 of the Securities Act 1978, as the case may be;
- (f) if at any time the Capital Notes are entitled to be quoted on the Stock Exchange, use reasonable endeavours to maintain such entitlement and furnish to the Stock Exchange such information as it may require in accordance with its normal requirements, or in accordance with any arrangements for the time being made with the Stock Exchange;
- (g) pay all duties, registration fees and other similar duties or fees including penalties, if any, payable on or in connection with the constitution and issue of the Capital Notes, the execution and registration of this Deed and the admissibility in evidence of each of the foregoing;
- (h) at the same time as it notifies the Registrar of Financial Service Providers under section 95 of the FMCA, notify the Supervisor of any 'prescribed change' as defined in section 95(2) of the FMCA;
- (i) in respect of any other change to the register required for the purposes of section 57(1)(b)(ii) of the FMCA, it will notify the Supervisor within five working days after becoming aware of the change; and
- (j) allow the Supervisor, on 24 hours' prior written notice, to inspect its business premises.

6.3 Company's Accounts and Reports of Directors: The Company covenants with the Supervisor that, so long as any Capital Notes are outstanding, the Company will, not later than four months after the end of its financial years and half-years, deliver to the Supervisor:

- (a) **Directors' Reports:** a report signed by two directors on behalf of the directors of the Company stating:
 - (i) to the best of their knowledge and belief, whether, during the immediately preceding financial year or half-year (as the case may be):

- (1) any matter has arisen relating to the Company and/or Fletcher Building and their respective subsidiaries which would materially and adversely affect the ability of the Company or Fletcher Building to perform its obligations under this Deed and (in the case of the Company) the Capital Notes;
 - (2) the Company has observed and complied in all material respects with all provisions expressed to be binding upon it under this Deed (and if not, particulars of the contravention);
 - (3) the Register has been duly maintained; and
 - (4) any Capital Notes have been converted, and if so details of the same; and
 - (ii) the aggregate Principal Amount of the Capital Notes outstanding, and the amount of any Unpaid Interest, at the end of the financial year or half-year (as the case may be); and
 - (b) **Company's Accounts:** a copy of its consolidated financial statements for the preceding financial year or half-year (as the case may be) audited in the case of financial statements for a financial year.
- 6.4 **Fletcher Building Covenants:** For so long as any Capital Notes are outstanding, Fletcher Building covenants with the Supervisor and each Noteholder:
- (a) not to pay any dividend on, or make any Distribution in respect of, Fletcher Building Shares at any time while there is any Unpaid Interest;
 - (b)
 - (i) to make available to the Supervisor, and to every Noteholder a copy of the consolidated financial statements of Fletcher Building for each financial year and financial half-year in accordance with rule 10.5 of the Listing Rules; and
 - (ii) to provide to the Supervisor, and to every Noteholder copies of communications sent to holders of Fletcher Building Shares as such, at the same time, and in the same format, as the communications are provided to holders of Fletcher Building Shares;
 - (c) to issue Fletcher Building Shares on conversion of Capital Notes in accordance with the Conditions and otherwise comply with the obligations expressed to be assumed by it in the Conditions;
 - (d) if at any time the Capital Notes are entitled to be quoted on the Stock Exchange, use reasonable endeavours to maintain such entitlement and procure that the Stock Exchange is provided such information as it may require in accordance with its normal requirements, or in accordance with any arrangements for the time being made with the Stock Exchange; and
 - (e) use its reasonable endeavours to ensure that Fletcher Building Shares issued on the conversion of Capital Notes are, upon their issue, entitled to be quoted on the Stock Exchange and that such quotation is maintained.
- 6.5 **Auditor:** The Company will comply with the requirements of Schedule 10 to the FMC Regulations regarding the appointment, and terms thereof, of any auditor.
- 6.6 **No related party restrictions:** Neither the Company, nor Fletcher Building, is restricted in any way under this Deed from entering into transactions with any of its associated persons (as that term is defined in section 12(1) of the FMCA).

7. SUPERVISOR'S POWER TO REMEDY AND WAIVE

- 7.1 Supervisor May Remedy:** If the Company or Fletcher Building fails to pay any moneys due and payable under, or to comply with, any Condition or this Deed then, without prejudice to any other rights and remedies of the Supervisor, it will be lawful, but not obligatory, for the Supervisor to pay any such moneys or to procure compliance with this Deed or such Condition. All moneys so paid by the Supervisor, and all costs charges and expenses incurred by the Supervisor in so doing, will be payable by the Company or Fletcher Building, as applicable, to the Supervisor upon demand in writing.
- 7.2 Waiver by Supervisor:** Subject to any direction or request given by the Noteholders, the Supervisor may from time to time by notice in writing to the Company and Fletcher Building waive in part or in whole, for a specified period or completely, and on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Company or Fletcher Building of any of the provisions of this Deed or the Conditions, provided the Supervisor is satisfied that the interests of the Noteholders will not be materially adversely effected as a result. Any such waiver will in no way affect the rights of the Supervisor and the Noteholders in respect of any other breach. Notwithstanding anything herein otherwise contained or implied or any rule of law to the contrary, the Supervisor shall not be deemed to have given any such waiver unless the waiver is given by the Supervisor in writing.

8. RIGHTS, SUPPLEMENTAL POWERS AND DISCRETIONS OF SUPERVISOR

- 8.1 Rights Held on Trust:** The Supervisor shall hold in trust for the benefit of the Noteholders:
- (a) the right to enforce the Company's or Fletcher Building's (as the case may be) duty to pay any moneys due and payable under any Condition or this Deed;
 - (b) the right to enforce the guarantee provided by Fletcher Building pursuant to clause 4; and
 - (c) the right to enforce any other duties that the Company, Fletcher Building and any other person have under:
 - (i) any Conditions; or
 - (ii) the provisions of this Deed or the FMCA in relation to the Capital Notes.
- 8.2 Supplemental Powers:** In addition to the provisions of the law relating to supervisors and to facilitate the discharge of its duties hereunder it is expressly declared that:
- (a) the Supervisor may, without liability for loss, obtain, accept and act on, or decline and elect not to accept and act on:
 - (i) the opinion or advice of any expert engaged under, and subject always to the provisions of, section 119 of the FMCA;
 - (ii) without limiting anything in sub-clause (i) above, the opinion or advice of, or any information obtained from any barrister, solicitor, valuer, stockbroker, auditor, chartered accountant or other expert, even though it may subsequently be found to contain some error or not be authentic;
 - (iii) a certificate signed by any two directors on behalf of the directors of the Company or Fletcher Building as to any fact or matter prima facie within their knowledge or that any transaction or thing is expedient or commercially desirable and not detrimental to the interests of the Noteholders as sufficient evidence of such fact or matter or the expediency or desirability of such transaction or thing; and

- (iv) the statements contained in any certificate or report given pursuant to the provisions of this Deed as conclusive evidence of the facts stated therein;
- (b) the Supervisor will not be responsible for, in good faith, acting or relying upon any resolution purporting to have been passed at any meeting of the Noteholders in respect of which a proper record has been made and which the Supervisor believes to have been properly passed, even though it afterwards appears that such resolution is not binding or valid by reason of a defect in the convening of the meeting or in the proceedings conducted at the meeting or otherwise howsoever;
- (c) without limiting anything in sub-clause (b) above and subject always to section 210 of the FMCA, the Supervisor must act in accordance with any direction given by a Special Resolution of Noteholders that is not inconsistent with any enactment, rule of law, or this Deed in relation to:
 - (i) seeking a remedy to a contravention referred to in section 111(1)(a)(iii) of the FMCA; and
 - (ii) any other matter connected with the Supervisor's functions;
- (d) the Supervisor will not be responsible for the receipt or application by the Company of the proceeds of the issue of Capital Notes or delivery of letters of allotment or certificates representing the Fletcher Building Shares (when issued) to the persons entitled to them;
- (e) the Supervisor is responsible for:
 - (i) acting on behalf of the Noteholders in relation to those matters specified in section 111(1)(a) of the FMCA; and
 - (ii) supervising the Company's performance:
 - A. of its issuer obligations (as defined in the FMCA); and
 - B. in order to ascertain whether the assets of the Company and of Fletcher Building that are or may be available are sufficient to discharge the indebtedness of the Company in respect of the Capital Notes as it becomes due; and
 - (iii) doing all things it has the power to do to cause any contravention referred to in section 111(1)(a)(iii) of the FMCA to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on the Noteholders);
- (f) the Supervisor will not be under any liability to the Noteholders whatsoever in exercising its powers and performing its duties as a supervisor unless the Supervisor has failed to show the degree of care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise having regard to the powers, authorities, discretions or responsibilities conferred or imposed upon it by this Deed or by law and the limitations thereon contained in and implied by this Deed and the Conditions;
- (g) except as otherwise expressly provided in this Deed, the Supervisor, as regards all trusts, powers, authorities and discretions vested in it by this Deed, will have absolute discretion as to their exercise and as to the conduct of any action proceeding or claim, and provided it acts in good faith it will not be responsible for any loss, damage or expense that may result from the exercise or non-exercise of such;
- (h) the Supervisor may, where permitted to do so by the FMCA, or as permitted by, and then subject to conditions imposed under, the Financial Markets Supervisors Act 2011 :
 - (i) delegate at any time to any person any of the trusts powers authorities or discretions vested in the Supervisor by this Deed which cannot conveniently

be exercised by it or through its employees upon such terms and conditions (including the power to sub-delegate) as the Supervisor may reasonably think fit;

- (ii) authorise such person as it thinks fit to act as its representative at any meeting; and
- (iii) apply to the Court at any time for directions in relation to any matter, or consent to, approve or oppose any application to Court by the Company or Fletcher Building, or by or at the instance of any Noteholder;
- (i) any consent given by the Supervisor for the purposes of this Deed may be given on such terms and conditions (if any) as the Supervisor reasonably thinks fit;
- (j) subject to clause 8.3, the Supervisor will not (unless ordered so to do by a court of competent jurisdiction) disclose to any Noteholder any confidential, financial, price sensitive, or other information made available to the Supervisor by the Company or Fletcher Building in connection with this Deed or otherwise howsoever and no Noteholder will be entitled to take any action to obtain from the Supervisor any such information;
- (k) the Supervisor may determine whether or not a failure by the Company or Fletcher Building to perform any obligation under the provisions of the Conditions or this Deed is in its opinion capable of remedy and/or will have a material adverse effect on the Noteholders and any such determination shall be conclusive and binding upon the Company, Fletcher Building and the Noteholders; and
- (l) the Supervisor shall have no duties and responsibilities under this Deed, other than under clause 3.5, to any Noteholder which is Fletcher Building, the Company or any of their subsidiaries.

8.3 Discretion to Consult Noteholders: In the event of any breach of the provisions of this Deed on the part of the Company or Fletcher Building or the occurrence of any circumstances which may result in such a breach which the Supervisor reasonably considers may have a material adverse effect on the Noteholders the Supervisor may, in its absolute discretion, require the Company to report the circumstances and nature of such breach and any other information concerning the Company or Fletcher Building which the Supervisor has received under or in relation to this Deed and which it reasonably considers to be material to the Noteholders or any of them and invite the Noteholders or any of them to indicate to the Supervisor their preferences as to any exercise or non-exercise of the Supervisor's powers under this Deed or as to any action or omission to act by the Supervisor in relation to the breach or any other matter or thing and, if the Company fails to so report, the Supervisor may, subject to clause 8.6, itself do so. Any such report shall be given in such manner as is considered by the Supervisor to be the most practicable and expedient in all the circumstances.

8.4 Duty of Supervisor: The Supervisor must:

- (a) act honestly in acting as a supervisor;
- (b) in exercising its powers and performing its duties, act in the best interests of the Noteholders; and
- (c) exercise reasonable diligence in carrying out its functions as a supervisor.

Without limiting any of the above, the Supervisor's duty to monitor the Company and/or Fletcher Building pursuant to this Deed and, if it thinks fit, to investigate and require the reporting of, or itself report, any breach in accordance with clause 8.3 shall be the sole and exclusive duty of the Supervisor under this Deed unless and until the Supervisor shall receive:

- (d) a request or direction pursuant to this Deed to act or not to act in exercise of any of its powers under this Deed;

- (e) assurance satisfactory to it of payment of reasonable remuneration and compensation for so acting, whether by way of deduction from amounts otherwise payable to Noteholders, or otherwise; and
 - (f) an indemnity in the terms of clause 8.6.
- 8.5 **Comply With Professional Standard of Care:** The Supervisor must, in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.
- 8.6 **Supervisor Right to be Indemnified:** The Supervisor may decline to take any action or exercise any power or discretion or comply with or implement any direction or request given pursuant to the provisions of this Deed whether or not it is otherwise bound to so act unless and until the Supervisor shall first be indemnified to its satisfaction against all actions, proceedings, claims and demands to which the Supervisor may be rendered liable and all costs, charges, damages and expenses which it may incur by so doing, including in respect of any action taken or not taken in pursuance of a request or instruction to represent or act on behalf of Noteholders collectively or any of them, whether or not in pursuance of a role or an exercise of powers expressly set out in this Deed.
- 8.7 **Fiduciary Relationship:** Nothing in this Deed prohibits the Supervisor or its holding company or any of their subsidiaries or their officers or shareholders (all hereinafter in this clause 8.7, where the context permits, being included in the expression the **Supervisor**) from being a Noteholder, creditor or shareholder of Fletcher Building, the Company or of any of their subsidiaries (all hereinafter in this clause 8.7 where the context permits being included in the expression **Fletcher Building**) or from acting in any other fiduciary, contractual, agency or representative capacity for a Noteholder or for Fletcher Building without breach of any obligations established by this Deed or otherwise imposed or implied by law arising out of any such relationship. The Supervisor may enter into any transactions with Fletcher Building in the ordinary course of business and will not be accountable to the Noteholders for any profits arising from such transactions.

9. CHANGES TO TRUST DEED

- 9.1 **Amendment of No Effect Unless:** An amendment to, or a replacement of, this Deed or any Conditions has no effect unless made:
- (a) with the consent of the Supervisor given under clause 9.2 below;
 - (b) under section 109 of the FMCA; or
 - (c) under sections 22(7) or 37(6) of the Financial Markets Supervisors Act 2011, or any other power to amend or replace this Deed under an enactment.
- 9.2 **Supervisor Consent:** The Supervisor must not consent to an amendment to, or a replacement of, this Deed or any Conditions under clause 9.1(a) unless:
- (a) either:
 - (i) the amendment or replacement is approved by, or is contingent on approval by, the Noteholders; or
 - (ii) the Supervisor is satisfied that the amendment or replacement does not have a material adverse effect on the Noteholders; and
 - (b) the Supervisor certifies to that effect and certifies, or obtains a certificate from a lawyer, that this Deed, as amended or replaced, will comply with sections 104 to 106 of the FMCA on the basis set out in the certificate.
- 9.3 **Approval of the Noteholders:** The approval of the Noteholders for the purposes of clause 9.2(a) must be the approval of a Special Resolution of:

- (a) the Noteholders; or
- (b) each class of Noteholders that is or may be adversely affected by the amendment or replacement.

9.4 **Subject to directions:** Clause 9.2 is subject to clause 8.2(c).

9.5 **Lodging of Changes:** Within 5 working days after an amendment to, or a replacement of, this Deed, the Company must ensure that notice of the amendment or replacement, and a copy of the certificate for the amendment or replacement (if any), is lodged with the Registrar of Financial Service Providers.

9.6 **Temporary Variation:** Subject to compliance with clause 9.1 above (if relevant) and any applicable law, the Supervisor may, with the consent of the Company, temporarily vary the provisions of this Deed or any Conditions, for such period and on such terms as may be deemed appropriate.

9.7 **Waivers:** Subject to compliance with clause 9.1 above (if relevant) and any applicable law, the Supervisor may waive, in whole or in part for a specified period or indefinitely and on such terms and conditions (if any) as may be deemed expedient, any breach or anticipated breach by the Company, Fletcher Building Limited, or either of them, of this Deed or any Conditions.

9.8 **Exemptions:** Subject to compliance with clause 9.1 above (if relevant) and any applicable law:

- (a) if the Company or Fletcher Building Limited, is granted an exemption, or an exemption is applicable to the Company or Fletcher Building Limited in relation to any obligation imposed upon the Company or Fletcher Building Limited by or pursuant to the FMCA, the FMC Regulations, the Companies Act, the Financial Reporting Act, or any other applicable law which is materially the same as or analogous to any obligation of the Company or Fletcher Building Limited, under this Deed; and
- (b) two Authorised Officers of the Company certify that such amendment, temporary variation or waiver will not have a material adverse effect on the Company or Fletcher Building Limited or Noteholders,

then the Supervisor may agree to amend or temporarily vary this Deed or the Conditions for the relevant Capital Notes or waive any breach or anticipated breach of such obligation in a manner which is consistent with the relevant exemption.

10. MEETINGS OF NOTEHOLDERS

10.1 **Regulations of Meetings:** All meetings of Noteholders shall be convened and held in accordance with the provisions of Schedule 3.

10.2 **Represent Noteholders:** The Supervisor may, of its own volition or pursuant to any directions or in accordance with any policy given by any meeting of Noteholders, represent Noteholders in any matter or proceedings affecting the interests of Noteholders.

11. INDEMNITY OF SUPERVISOR

11.1 **Indemnity:** Without prejudice to the right of indemnity by law given to trustees and supervisors and subject always to section 105 of the FMCA, the Supervisor and each of its officers, servants or agents shall be entitled to be indemnified by the Company in respect of all liabilities and expenses incurred by it or any of them in the performance or exercise or attempted performance or exercise of any of the trusts, powers, authorities or discretions conferred on the Supervisor or any of them by this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed and the Supervisor may retain and pay out of

any moneys it holds pursuant to this Deed, all sums necessary to effect and satisfy that indemnity.

11.2 Supervisor not indemnified: No provision of this Deed shall have the effect of indemnifying the Supervisor against liability where the Supervisor fails to:

- (a) act honestly in acting as a supervisor;
- (b) in exercising its powers and performing its duties as a supervisor, act in the best interests of the Noteholders;
- (c) exercise reasonable diligence in carrying out its functions as a supervisor; or
- (d) in exercising its powers and performing its duties as a supervisor, exercise the care, diligence and skill that a prudent person engaged in the business of acting as a licensed supervisor would exercise in the same circumstances.

12. SUBSTITUTION OF COMPANY

12.1 Conditions of Substitution: The Company shall have the power to substitute in place of the Company (or of any previous substitute under this clause 12) as the Company under this Deed, any other company (any such substituted company being hereinafter called the **Substituted Company**), and the Supervisor and Fletcher Building shall agree to such substitution provided that:

- (a) the Substituted Company is Fletcher Building (in which case all necessary amendments shall be made to this Deed to remove the guarantee of Fletcher Building); or
- (b)
 - (i) a trust deed is executed or some other form of undertaking is given by the Substituted Company in form and manner reasonably satisfactory to the Supervisor, agreeing to be bound by the terms of this Deed and the Capital Notes with any consequential amendments which the Supervisor may deem to be appropriate as fully and effectually as if the Substituted Company had been named in this Deed and any Supplemental Deed as the Company in place of the Company (or of any previous substitute under this clause 12);
 - (i) without prejudice to the generality of paragraph (i) hereof, where the Substituted Company is incorporated, domiciled or resident in, or subject generally to the taxing jurisdiction of, a territory other than New Zealand, undertakings or covenants in respect of taxes shall be given on such terms as the Supervisor may reasonably require;
 - (ii) the Capital Notes remain convertible into Fletcher Building Shares in the manner provided in this Deed and the Conditions;
 - (iii) the Capital Notes remain guaranteed by Fletcher Building on the terms set out in this Deed;
 - (iv) the directors of the Substituted Company certify that the Substituted Company is solvent at the time at which the said substitution is proposed to be effected, and the Supervisor shall be entitled to rely absolutely on such certification and shall not be bound to have regard to the financial condition, profits or prospects of the Substituted Company or to compare the same with those of the Company (or any previous substitute under this clause 12);
 - (v) without prejudice to the right of reliance of the Supervisor under paragraph (v) above the Supervisor is satisfied that the said substitution will not have a material adverse effect on the Noteholders generally; and
 - (vi) without prejudice to the generality of paragraph (i) above, the Supervisor may in the event of such substitution agree (without the consent of the Noteholders) to a change in the law governing this Deed and/or the Capital

Notes provided that such change would not in the opinion of the Supervisor have a material adverse effect on the Noteholders generally.

- 12.2 **Release of Company:** Any such agreement by the Supervisor shall, if so expressed, operate to release the Company or any such previous substitute as aforesaid from any or all of its obligations under the Capital Notes and this Deed. Not later than 14 days after the execution of any such documents as aforesaid, and after compliance with the said requirements of the Supervisor, the Company shall give notice thereof in a form previously approved by the Supervisor to the Noteholders.
- 12.3 **Transfer of Domicile:** The Company may upon giving the Supervisor 30 days' notice in writing become incorporated under the law in force in, or in any part of, another country provided that the Company gives such reasonable undertakings or covenants in respect of taxes on such terms as the Supervisor may reasonably require and the Supervisor receives, in a form satisfactory to it, a legal opinion as to the enforceability of the Company's obligations under the Trust Deed and the Capital Notes from counsel acceptable to the Supervisor in the Company's new country of incorporation.

13. RETIREMENT AND NEW APPOINTMENT OF SUPERVISOR

- 13.1 **Change of Supervisor:** The Supervisor shall cease to hold that appointment (subject to clause 13.2) if the Supervisor:
- (a) is removed by the FMA or the Company under Part 2 of the Financial Markets Supervisors Act 2011;
 - (b) is removed by a Special Resolution of the Noteholders;
 - (c) resigns upon giving 90 days' notice in writing to the Company; or
 - (d) subject to clause 13.2, is removed by the Company by 90 days' notice in writing.
- 13.2 **Conditions to Change of Supervisor:** The Supervisor may not be removed or resign under clauses 13.1(b) or (c) unless:
- (a) all functions and duties of the position have been performed; or
 - (b) another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - (c) the court consents.

The Supervisor may not be removed under clause 13.1(d) unless the FMA has given its prior written consent.

13.3 Appointment of New Supervisor:

- (a) Except where the power is reserved to the FMA under the relevant provisions of the Financial Markets Supervisors Act 2011, the power of appointing a new supervisor or supervisors of this Deed for the Noteholders of, and in respect of, the Capital Notes is vested in the Noteholders pursuant to a Special Resolution and in the Company, but no supervisor may be appointed by the Company unless such appointment is first approved by a Special Resolution of the Noteholders. The Company must promptly call a meeting of the Noteholders for the purpose of approving an appointment of a new supervisor and if approval is given the Company may exercise its power of appointment.
- (b) If the Company, within 90 days of receiving notice of the Supervisor's intention to retire, fails to call a meeting of the Noteholders as aforesaid, the Noteholders may by Special Resolution exercise such power to the exclusion of the Company.
- (c) Notwithstanding clause 13.3(a), if a person has been appointed by the FMA as supervisor under this Deed pursuant to section 22(2)(b) of the Financial Markets Supervisors Act 2011, the Company may, before the end of that person's six

month appointment period, appoint that person on a continuing basis as the supervisor of this Deed for the Noteholders of, and in respect of, the Capital Notes without any requirement for Noteholder approval, provided that as soon as reasonably practicable following the appointment the Company gives notice to Noteholders of:

- (i) the appointment of that supervisor pursuant to this clause; and
- (ii) the right of Noteholders to appoint an alternative supervisor pursuant to clause 13.3(a).

13.4 Lodging of Notice of Change: Within 5 working days after a change to the Supervisor under clause 13.1, the Company must ensure notice of the change is lodged with the Registrar of Financial Service Providers.

14. SUPERVISOR'S REMUNERATION AND EXPENSES

14.1 Basic Remuneration: The Company shall pay to the Supervisor remuneration for its services as Supervisor in accordance with the terms of any current agreement contained in letters exchanged between Fletcher Building and the Supervisor.

14.2 Expenses: The Company will also pay all reasonable expenses on a full indemnity basis (including travelling expenses) incurred by or on behalf of the Supervisor in connection with:

- (a) the preparation, execution and variation (and release when applicable) of this Deed and any registration costs and tax or duties in connection with any of them;
- (b) the exercise or attempted exercise by the Supervisor of any power or discretion conferred on the Supervisor by this Deed, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Supervisor; and
- (c) the convening and holding of any meeting of Noteholders and carrying out of any directions or resolutions of such a meeting.

14.3 Liability Not Terminated: The said remuneration and payments shall continue to be payable until the trusts of this Deed are finally wound up, whether or not Fletcher Building or the Company shall be wound up or the trusts of this Deed are in course of administration by or under the direction of the Court.

15. NOTICES

All notices to be given by the Supervisor to the Company, Fletcher Building or a Noteholder or by the Company or Fletcher Building to the Supervisor or a Noteholder pursuant to this Deed shall be deemed effective if made in writing, delivered or posted by pre-paid mail or sent by facsimile addressed to:

- (a) in the case of the Company:

810 Great South Road
Penrose
Auckland 1061

Attention: (09) 525 9000
Fax No: (09) 525 9030;

- (b) in the case of Fletcher Building:

810 Great South Road
Penrose
Auckland 1061

Attention: (09) 525 9000
Fax No: (09) 525 9030;

- (c) in the case of the Supervisor:

Corporate Trust Limited trading as Foundation Corporate Trust
Level 14
191 Queen Street
Auckland 1010

Attention: Manager
Fax No: (09) 969 3732

- (d) in the case of a Noteholder, the address of such Noteholder last entered in the Register,

or, in the case of (a), (b) or (c) above, such other address as the Company, Fletcher Building or the Supervisor may from time to time in writing nominate to the others. Notices will be deemed to be given, in the case of personal delivery, when delivered, and in the case of post, two business days after the date of posting. If sent by facsimile, notices will be deemed to be given when sent, or if sent on other than a business day or after 5.00pm on any business day, the next business day.

16. GOVERNING LAW

This Deed is governed by the laws of New Zealand.

17. DISCHARGE OF TRUST DEED

The Supervisor shall, if satisfied that no Capital Notes are outstanding other than Capital Notes held by Fletcher Building or any of its subsidiaries, execute a discharge of this Deed whenever requested by the Company so to do.

18. CONTRACTS (PRIVITY) ACT

Subject always to the provisions of clause 3.5, this Deed is intended to confer a benefit on, and be enforceable by, the Noteholders.

19. COUNTERPARTS

This Deed may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Deed by signing any such counterpart.

EXECUTION

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SCHEDULE 1
SPECIFIC TERMS OF THE INITIAL CAPITAL NOTES

1. Definitions

For the purposes of this Schedule:

"March 2008 Capital Note" means each Initial Capital Note that is designated as a March 2008 Capital Note when issued by the Company; and

"March 2010 Capital Note" means each Initial Capital Note that is designated as a March 2010 Capital Note when issued by the Company.

For the purposes of Schedule 2:

"Capital Note" means each March 2008 Capital Note or each March 2010 Capital Note; and

"Condition" refers to a condition in "(B) General Conditions" of Schedule 2.

2. Specific Terms

(a) In respect of the March 2008 Capital Notes:

- **"Election Date"** means 15 March 2008 and each subsequent New Election Date;
- **"First Interest Date"** means 15 March 2003;
- **"Interest Date"** means 15 March and 15 September in each year, beginning with 15 March 2003 and ending on the Election Date; and
- **"Interest Rate"** means:
 - in respect of the period from allotment to the first Election Date, the greater of:
 - (i) 8.60 percent per annum; and
 - (ii) the Interpolated Government Stock Rate (as defined in the offer document dated on or about 15 November 2002) plus a margin of 2.40 percent per annum,or such higher rate as the Company determines in accordance with that offer document; and
 - in respect of the period after the first Election Date, the rate determined by the Company in accordance with Condition 4.1 or 4.3; and

(b) in respect of the March 2010 Capital Notes:

- **"Election Date"** means 15 March 2010 and each subsequent New Election Date;
- **"First Interest Date"** means 15 March 2003;
- **"Interest Date"** means 15 March and 15 September in each year, beginning with 15 March 2003 and ending on the Election Date; and
- **"Interest Rate"** means:
 - in respect of the period from allotment to the first Election, the greater of:
 - (ii) 8.85 percent per annum; and
 - (iii) the final interest rate for the March 2008 Capital Notes plus an additional 0.25 percent per annum,

or such higher rate as the Company determines in accordance with that offer document; and

- in respect of the period after the first Election Date, the rate determined by the Company in accordance with Condition 4.1 or 4.3.

SCHEDULE 2

CONDITIONS OF THE CAPITAL NOTES

The Capital Notes have the benefit of, and are subject to the terms and conditions of, the trust deed dated 12 November 2002 between Fletcher Building Industries Limited, Fletcher Building Limited and Corporate Trust Limited trading as Foundation Corporate Trust (the "Trust Deed"), the applicable constituting Supplemental Trust Deed (if any) and the provisions set out below. Copies of the Trust Deed may be inspected at the registered office of the Company, at the head office of the Supervisor and at the Transfer Office of the Registrar. In this respect the Transfer Office of the Registrar is:

Computershare Investor Services Limited
Level 21
59 Hurstmere Road
Takapuna

(A) UNDERTAKINGS

1. The Company undertakes to each Noteholder as follows:
 - (a) to pay interest on the Capital Notes in accordance with Conditions 3.1 to 3.4, but subject to Conditions 2.2, 4.3, 4.4 and 4.5;
 - (b) in and upon the Liquidation of the Company to redeem the Capital Notes by payment of the Liquidation Amount in accordance with Condition 2.2(b); and
 - (c) if the Company elects to do so pursuant to Condition 4.5, to purchase the Capital Notes in accordance with that Condition.
2. Fletcher Building undertakes to each Noteholder as follows:
 - (a) to convert the Capital Notes into Fletcher Building Shares in accordance with Conditions 4.3 and 4.4;
 - (b) in and upon the Liquidation of Fletcher Building to pay the Liquidation Amount in accordance with clause 4 of the Trust Deed; and
 - (c) if Fletcher Building elects to do so pursuant to Condition 4.5, to purchase the Capital Notes in accordance with that Condition.

(B) GENERAL CONDITIONS

1. TRUST DEED

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

2. STATUS AND SUBORDINATION OF THE CAPITAL NOTES

- 2.1 **Status:** The Capital Notes constitute unsecured subordinated obligations of the Company and rank *pari passu* and without priority or preference among themselves. The Company's obligations in respect of the Capital Notes are guaranteed on a subordinated basis by Fletcher Building on the terms set out in the Trust Deed. None of the Company's directors, the directors of Fletcher Building, the Supervisor or any person, other than Fletcher Building, guarantees the Company's obligations under the Trust Deed or the Capital Notes in any way.
- 2.2 **Subordination:** The obligations of the Company or Fletcher Building to the Noteholder, and the rights of the Noteholder against the Company or Fletcher Building, as applicable, in respect of the Capital Notes or the Guaranteed Indebtedness, as applicable, are subordinated to the claims of the Senior Creditors of the Company or Fletcher Building, as applicable, in that in and upon the Liquidation of the Company or Fletcher Building,

as applicable, the claims of the Noteholder against the Company or Fletcher Building, as applicable, in respect of the Capital Notes or the Guaranteed Indebtedness in such Liquidation shall be:

- (a) subordinated in point of priority and right of payment to the claims of the Senior Creditors of the Company or Fletcher Building, as applicable; and
- (b) limited to the "Liquidation Amount" (as defined below).

For this purpose:

- (i) **"Liquidation Amount"** means the amount which is equal to the aggregate Value (as defined below) of the Fletcher Building Shares the Noteholder would have received had the Capital Notes been converted immediately prior to the commencement of the Liquidation of the Company or Fletcher Building, whichever occurs first, into such number (fractions being rounded to the next whole number) of Fletcher Building Shares as is obtained by dividing the Relevant Amount by the Value of one Fletcher Building Share;
- (ii) **"Relevant Amount"** means, in respect of any Capital Notes on any date, the aggregate of the Principal Amount plus Accrued Interest and Unpaid Interest in respect of the relevant Capital Notes as at that date; and
- (iii) **"Value"** means, in respect of any Fletcher Building Shares, 98 percent of the weighted average sale price of Fletcher Building Shares (expressed in cents and fractions of cents) sold on the Stock Exchange on each of the 10 business days immediately preceding the date of commencement of the Liquidation of the Company or Fletcher Building, as applicable, and, if no Fletcher Building Shares have been so sold during such period, the weighted average sale price will be deemed to be the price at which Fletcher Building Shares were last sold on the Stock Exchange prior to such period, as determined by the Stock Exchange.

2.3 Relevant Provisions of Trust Deed: The Trust Deed contains provisions (which, like all other provisions of the Trust Deed, are binding on the Supervisor and each Noteholder) restricting the remedies of the Supervisor and the Noteholder in respect of the Capital Notes and providing that the Supervisor and the Noteholder shall hold on trust various amounts in favour of the Senior Creditors of the Company and/or Fletcher Building. These provisions are set out verbatim at the end of these Conditions.

3. INTEREST

3.1 Interest Rate and Calculation of interest:

- (a) Each Capital Note bears interest at the Interest Rate, calculated on its Principal Amount, and, unless otherwise agreed by the Company and the first Noteholder (the **"Purchaser"**), accruing daily from the date specified in any investment statement, prospectus or other offer document in relation to the Capital Notes by the Company to the Purchaser (such date, or other date agreed by the Company and the Purchaser for the purposes of interest calculation, as entered on the Register being the **"Issue Date"**), on the basis of a 365-day year provided that, if such Capital Note is purchased on the Issue Date at a discount or premium to its Principal Amount, the interest payable on the First Interest Date shall be calculated by applying the yield to maturity (as notified by the Company to the Purchaser at the time of purchase) to the purchase price. Interest shall cease to accrue on each Capital Note on the date upon which it is converted into Fletcher Building Shares in accordance with these Conditions (the **"Conversion Date"**) or, in the event of the Liquidation of the Company or Fletcher Building, on the date (the **"Redemption Date"**) on which the Capital Note is redeemed by payment of the Liquidation Amount in accordance with Condition 2.2.

- (b) In these Conditions all interest on the Principal Amount of the Capital Notes which has accrued but not become payable in accordance with these Conditions is referred to as "**Accrued Interest**".
- (c) Unless otherwise agreed by the Company and the Purchaser including in any investment statement, prospectus or other offer document in relation to the Capital Notes (and subject to any previous Conditions applicable to the Capital Notes), any interest paid on the First Interest Date shall be paid to the Purchaser of the Capital Notes, whether or not on that date the Noteholder of the Capital Notes is some other person. All other interest shall be paid to the Noteholder in accordance with these Conditions.

3.2 Interest and Unpaid Interest: Interest on the Principal Amount of the Capital Notes accrued during each Interest Period is payable in arrears on the relevant Interest Date. If an Interest Date falls on a day that is not a business day, then interest shall be paid on the next business day. All interest not so paid shall, so long as it remains unpaid, bear interest ("**Additional Interest**") at the Interest Rate accruing daily and compounded on each subsequent Interest Date. The Company may, at its option and upon giving not more than 14 days nor less than seven days' notice to Noteholders (which notice may be accompanied by a postdated cheque), pay all or part of such interest and Additional Interest (together "**Unpaid Interest**") being, if part only, not less than all of the Unpaid Interest relating to one or more Interest Periods, but so that no Unpaid Interest relating to any Interest Period may be paid before the Unpaid Interest relating to any earlier Interest Period has been paid. All Unpaid Interest and Accrued Interest shall become due and payable in and upon the Liquidation of the Company or Fletcher Building, but subject to Condition 2.2.

For this purpose:

- (a) "**Final Interest Date**" means the first to occur of the Conversion Date and the Redemption Date (as those terms are defined in Condition 3.1); and
- (b) "**Interest Period**" means the period from and including one Interest Date (or in the case of the first Interest Period the Issue Date) to, but excluding, the next (or, in the case of the first Interest Period, the First) Interest Date. For the purposes of this definition, if the relevant Interest Date falls on a non-business day, the Interest Period will only be extended to the next business day if that Interest Date is also an Election Date.

Except as provided in this Condition, the Company shall not be obliged to pay interest on any Interest Date but the Company and Fletcher Building have each covenanted in the Trust Deed not to pay any dividend on, or make any other Distribution in respect of, ordinary shares of the Company, in the case of the Company and Fletcher Building Shares, in the case of Fletcher Building, while any such interest remains unpaid. Any non-payment of interest on an Interest Date, other than the Final Interest Date, shall not constitute a default by the Company or Fletcher Building for any purpose.

- 3.3 Payments:** Subject to Condition 3.1, all payments under the Capital Notes may be satisfied by mailing cheques on the relevant Interest Date to the Noteholders at their addresses entered in the Register as at 5.00pm on the Friday immediately prior to the date which is seven business days prior to such Interest Date or where that Friday is not a business day, the business day immediately preceding that Friday or by direct credit to any bank account nominated by the Noteholder.
- 3.4 Withholding Tax:** All payments or credits to, or to the account of, Noteholders (including payments of, and credits in respect of, interest) will be made net of any tax in respect thereof required by law to be withheld, deducted or paid by the Company or Fletcher Building, as applicable, except to the extent that the Company or Fletcher Building, as applicable, is satisfied that the Noteholder is exempt from any such tax or is a person in respect of whom any such withholding, deduction or payment is not required to be made.

Any Noteholder claiming any such exemption or to be such a person shall provide the Company and Fletcher Building with such evidence as the Company or Fletcher Building may from time to time, require to satisfy itself in respect of the validity of that claim.

4. ELECTION TO RETAIN OR CONVERT

4.1 Election Notice: The Company shall give to each Noteholder not later than three days after the date (the "Election Record Date") which is 33 business days before the Election Date, a notice (an "Election Notice") specifying the new terms (the "New Terms") as to interest rate, interest dates, new election date (a "New Election Date", which expression shall also include a new election date specified in an Early Election Notice, as defined below) and otherwise varying the terms to apply to the Capital Notes after the Election Date.

4.2 Noteholder's Election to Retain or Convert: The Noteholder shall complete and sign the Election Notice and return it to the Company not later than the date (the "Notification Date") which is 20 business days after the Election Record Date and shall indicate in the Election Notice either or both of:

- (a) the Capital Notes (being Capital Notes having, except as approved by the Company (in its absolute discretion) which approval may be recorded in any investment statement, prospectus or other offer document in relation to the Capital Notes, an aggregate Principal Amount of not less than \$5,000 or any greater amount which is a multiple of \$1,000) in respect of which the Noteholder accepts the New Terms with effect from the Election Date; and
- (b) the Capital Notes which the Noteholder wishes to convert into Fletcher Building Shares on the Election Date.

If, in relation to a Capital Note:

- (c) the Company does not receive an Election Notice from the Noteholder on or before the Notification Date; or
- (d) to the extent that the Company does so receive an Election Notice but such Election Notice does not indicate whether or not the Noteholder elects to convert all or part of the Capital Notes into Fletcher Building Shares; or
- (e) if the Election Notice requires a declaration to be completed by the Noteholder as to the name and domicile of the beneficial owner of the Capital Notes and such declaration is not duly completed; or
- (f) if for any reason (not attributable to the Company or Fletcher Building) the Election Notice is otherwise defective,

the Noteholder shall be deemed to have accepted the New Terms in respect of, in the case of (c), (e) and (f) above, all such Capital Notes and, in the case of (d) above, such number of such Capital Notes in respect of which no such indication has been given.

4.3 Early Conversion Rights Of Noteholders: If, in the opinion of the Company (and whether as a result of a general offer to purchase made to some or all holders of Fletcher Building Shares or otherwise), any person, whether alone or acting in concert with any other person:

- (a) is, or is entitled to become, the holder (absolutely or beneficially, and whether directly or indirectly) of 70 percent or more, in aggregate, of the Fletcher Building Shares; or
- (b) has, or will have, the right to cast more than 70 percent of the votes on a poll at a general meeting of Fletcher Building on a matter on which the holders of Fletcher Building Shares are entitled to vote,

the Company shall give notice (an "**Early Election Notice**") of such fact as soon as practicable after it has formed such opinion to the Noteholders whose names are

entered in the Register on the date (the "**Early Election Record Date**") which is three days prior to the date the Early Election Notice is given. The Early Election Notice shall specify a date (an "**Early Notification Date**") which must be a business day not later than 10 days after the Early Election Notice is given and shall state that Noteholders may, at their option (but subject to Condition 4.5), by completing, signing and returning the Early Election Notice to the Company not later than the Early Notification Date, elect to convert all or some (as indicated by the Noteholder on the Early Election Notice) of the Capital Notes held by the Noteholder into Fletcher Building Shares on the date (the "**Early Election Date**") which is 13 business days after the Early Notification Date.

If, in relation to a Capital Note:

- (c) the Company does not receive an Early Election Notice from the Noteholder on or before the Early Notification Date; or
- (d) to the extent that the Company does so receive an Early Election Notice but such Early Election Notice does not indicate whether or not the Noteholder elects to convert all or part of the Capital Notes; or
- (e) if the Early Election Notice requires a declaration to be completed by the Noteholder as to the name and domicile of the beneficial owner of the Capital Notes and such declaration is not duly completed; or
- (f) if for any reason (not attributable to the Company or Fletcher Building) the Early Election Notice is otherwise defective,

the Noteholder shall be deemed to have elected not to convert, in the case of (c), (e) and (f) above, all such Capital Notes and, in the case of (d) above, such number of such Capital Notes in respect of which no such indication has been given.

4.4 Conversion to Fletcher Building Shares:

- (a) **Basis of Conversion:** Subject to paragraph (b) of this Condition and to Condition 4.5, Fletcher Building undertakes to convert any Capital Notes which the Noteholder has (or is deemed to have) elected to convert, less any such Capital Notes which the Company has elected to redeem or the Company, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) has elected, pursuant to Conditions 4.5, to purchase, by the issue to the Noteholder on the Election Date or the Early Election Date (as the case may be) of such number (fractions being rounded to the next whole number) of Fletcher Building Shares as is obtained by dividing the Relevant Amount by the Value of one Fletcher Building Share.

For this purpose:

- (i) "**Relevant Amount**" means, in respect of any Capital Notes, the aggregate as at the Election Date or Early Election Date (as the case may be) of the Principal Amounts of, and Accrued Interest and Unpaid Interest in respect of, such Capital Notes; and
- (ii) "**Value**" means, in respect of any Fletcher Building Shares, 98 percent of the weighted average sale price of the Fletcher Building Shares (expressed in cents and fractions of cents) sold on the Stock Exchange on each of the 10 business days immediately following the Notification Date or Early Notification Date (as the case may be). If no Fletcher Building Shares have been so sold during such period, the weighted average sale price will be deemed to be the price at which the Fletcher Building Shares were last sold on the Stock Exchange prior to such period, as determined by the Stock Exchange.

Each Fletcher Building Share issued pursuant to this Condition shall rank *pari passu* in all respects with the Fletcher Building Shares then on issue, except that such Fletcher Building Shares will not carry any rights to any dividend or other Distribution declared or paid or made on such Fletcher Building Shares by reference to a record date prior to the Election Date or the Early Election Date (as the case may be). If any dividends or other Distributions are declared or paid or made on Fletcher Building Shares by reference to a record date after the Notification Date or Early Notification Date (as the case may be), but before or on the Election Date or Early Election Date (as the case may be), then, for the purposes of this Condition, the sale price for such Fletcher Building Shares on the day of and preceding such record date will be adjusted by the directors of Fletcher Building to such extent as they consider reasonable having regard to such dividend or other Distribution. Letters of allotment or certificates (if any) in respect of Fletcher Building Shares so issued shall be posted to the relevant Noteholders on, or as soon as practicable after, the Election Date or the Early Election Date (as the case may be).

- (b) **Alternatives to Conversion:** If, at any time prior to the Election Date, Fletcher Building is unable lawfully (other than by reason of its own action or inaction) to issue Fletcher Building Shares to Noteholders in conversion of Capital Notes in accordance with these Conditions or Fletcher Building Shares cease to be eligible to be quoted on the Stock Exchange, the Capital Notes will be unaffected and continue in force on their then terms (including as to Interest Rate) until the Election Date or any earlier Early Election Date, and if on the Election Record Date or any earlier Early Election Record Date Fletcher Building is still so unable, or Fletcher Building Shares are still not so eligible to be quoted and the Supervisor is not satisfied that such Fletcher Building Shares will become eligible to be so quoted within 30 days, the Noteholders' right to elect to convert their Capital Notes into Fletcher Building Shares on the Election Date or Early Election Date (as the case may be) shall be deemed to be suspended and the Election Notice or Early Election Notice (as the case may be) will specify:
- (i) that the Interest Rate to apply to the Capital Notes from the Election Date or Early Election Date (as the case may be) to the New Election Date will be the "Market Rate" (as defined below) as at the Election Date or Early Election Date (as the case may be); and
 - (ii) a New Election Date (which shall be a business day) to be selected by the Company such that the period from the Election Date or Early Election Date (as the case may be) to the New Election Date shall not exceed five years.

If, between the Election Record Date and the Election Date or between any Early Election Record Date and any Early Election Date, Fletcher Building becomes unable lawfully (other than by reason of its own action or inaction) to issue any Fletcher Building Shares to Noteholders in conversion of Capital Notes in accordance with these Conditions or any Fletcher Building Shares cease to be eligible to be quoted on the Stock Exchange any election by a Noteholder to convert Capital Notes will be deemed to be void and the Capital Notes will be unaffected and continue in force from the Election Date or Early Election Date (as the case may be) on the terms specified in the Election Notice or Early Election Notice (as the case may be), except that:

- (iii) the rate of interest payable on the Capital Notes from the Election Date or Early Election Date (as the case may be) to the New Election Date will be the Market Rate (as defined below) as at the Election Date or Early Election Date (as the case may be), or such other rate as may be proposed by the Company and agreed to by the Supervisor; and

- (iv) the New Election Date (which shall be a business day) to be selected by the Company and notified to the Noteholders, shall be such that the period from the Election Date or Early Election Date (as the case may be) to the New Election Date shall not exceed five years.

For this purpose:

- (a) **"Market Rate"** means the rate percent per annum which is equal to the aggregate of:
 - (A) the Government Stock Rate (as defined below) as at the Election Date or Early Election Date (as the case may be); and
 - (B) the margin, expressed as a rate percent per annum, by which the Interest Rate on the Capital Notes exceeds the Government Stock Rate as at the Interest Determination Date (as defined below); and
- (b) **"Interest Determination Date"** means the later of:
 - (A) the date on which the Capital Note was issued or, if the Capital Note was issued as one or more of a series, the first date on which any of the Capital Notes of such series were issued; and
 - (B) the last date on which any New Terms applicable to the Capital Note came into effect; and
- (c) **"Government Stock Rate"** means the average of the bid rates for the purchase of New Zealand Government Stock of a term that is the nearest equivalent to:
 - (A) for the purposes of (a)(A) of the definition of Market Rate the period from the Election Date or Early Election Date (as the case may be) to the New Election Date; and
 - (B) for the purposes of (a)(B) of the definition of Market Rate the period from the Interest Determination Date to the Election Date,as quoted to the Company by any three registered banks, selected by the Company and approved by the Supervisor, at or about 11 a.m. on any relevant date or if, in the opinion of the Company, the average of such bid rates does not accurately reflect the then current market yield to maturity (expressed as a rate percent per annum) obtainable on such New Zealand Government Stock or on other then available New Zealand Government debt securities or if, at or about that time, for any reason, less than three registered banks are quoting such bid rates, the Government Stock Rate shall be the rate determined by an independent financial expert, to be selected by the Supervisor after consultation with the Company, as being equal to the then current yield to maturity (expressed as a rate percent per annum) obtainable on New Zealand Government Stock (or if there is none, other fixed interest securities or other securities considered by such expert to be substantially the equivalent of New Zealand Government Stock) having a term which is the nearest equivalent to the relevant term.

4.5 **Option to Redeem or Purchase:** Notwithstanding any other Condition:

- (i) the Company shall have the option to redeem for cash on the Election Date or Early Election Date (as the case may be); and
- (ii) the Company, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) shall have the option to purchase for cash on the Election Date or Early Election Date (as the case may be),

all or any Capital Notes which, but for this Condition, Fletcher Building would be obliged to convert into Fletcher Building Shares pursuant to Conditions 4.3 or 4.4.

The redemption or purchase price shall be an amount equal to the aggregate of the Principal Amount of, and the Accrued Interest and Unpaid Interest in respect of, such Capital Notes as at the date of payment of the redemption or purchase price. Payment for such Capital Notes shall be made by cheque drawn in favour of, and posted not later than the Election Date or Early Election Date (as the case may be) to the address in the Register of the relevant Noteholder or may be direct credited on such day to any bank account nominated by such Noteholder. Each such payment, when cleared, shall be a complete satisfaction and discharge of any obligation of the Company or Fletcher Building to the relevant Noteholder in relation to such Capital Notes, including the obligation of Fletcher Building to issue Fletcher Building Shares in conversion of the relevant Capital Notes.

If and to the extent that the Company, Fletcher Building or a subsidiary of Fletcher Building (or their nominee) elects to exercise such option it shall give notice of such exercise to the relevant Noteholders not later than three business days prior to the Election Date or Early Election Date (as the case may be) in such manner as the Company, Fletcher Building or the subsidiary of Fletcher Building (as the case may be) determines to be the most practicable in all the circumstances (including by telephone subject to later confirmation in writing), but any omission to give such notice and/or the non receipt of such notice by any Noteholder shall not invalidate or otherwise affect the rights and obligations of the Company to redeem Capital Notes or of the Company, Fletcher Building or the subsidiary of Fletcher Building (or their nominee) to purchase Capital Notes.

- 4.6 **Share Registry:** All Fletcher Building Shares issued upon the conversion of Capital Notes will be entered on the Share Register of Fletcher Building in New Zealand.

5. TRANSFERS OF CAPITAL NOTES

- 5.1 **Electronic Transfer:** Subject to Condition 5.3, a Capital Note may be transferred in accordance with Sub-part 9 of Part 5 of the FMCA or any system approved under section 7(1) of the Securities Transfer Act 1991 (as the case may be). The directors of the Company must register any transfer of Capital Notes presented for registration in accordance with such system and will not be obliged to enquire as to due execution or authorisation of any transfer effected by reason of such system.
- 5.2 **Transfer:** The Capital Notes may be transferred in such minimum Principal Amounts as the Company may from time to time stipulate by, subject to Condition 5.1, an instrument in writing in the usual or common form subject to the following provisions:
- (a) every instrument of transfer must be signed by the transferor and the transferor shall be deemed to remain the owner of each Capital Note concerned until the name of the transferee is entered in the Register;
 - (b) every instrument of transfer must be left duly stamped with all (if any) duty payable on it at the office of the Registrar or at the registered office of the Company for registration accompanied by such evidence as the Directors may require to prove the title of the transferor or his or her right to transfer each such Capital Note. Upon being satisfied as to the due execution of the transfer and the due payment of any applicable stamp duty the Directors will, subject to Condition 5.3, register the transfer and will recognise the transferee as the Noteholder of each Capital Note comprised in the transfer;
 - (c) all instruments of transfer which are registered will be retained by the Company but any instrument of transfer which the directors decline to register shall be returned to the person submitting it; and
 - (d) no fee shall be charged for the registration of a transfer.

5.3 Restriction on Transfer:

- (a) The Company shall not be obliged to register any transfer of a Capital Note during the period of three business days immediately preceding the Final Interest Date nor during the period between the Election Record Date and the Election Date.
- (b) Except as approved by the Company (at its absolute discretion) which approval may be recorded in any prospectus or other offer document in relation to the Capital Notes, no transfer shall be permissible or be accepted for registration where any proposed transfer would result in the transferee or the transferor holding Capital Notes with the same Election Date having an aggregate Principal Amount of less than \$5,000.

5.4 Transmission by Operation of Law: Any person becoming entitled to any Capital Note by operation of law (including the death or bankruptcy of any Noteholder) may, upon producing such evidence of his entitlement as shall be acceptable to the Company, obtain registration as the Noteholder of such Capital Note or execute a transfer of such Capital Note. This provision includes any case where a person becomes entitled as a survivor of persons registered as joint Noteholder.

5.5 FASTER Transaction Statement: Upon the issue of Further Capital Notes and upon registration of a transfer of a Capital Note pursuant to Conditions 5.1, 5.2, 5.3 or 5.4 the Company must issue to the transferee a statement recording certain details (including, without limitation, those specified in the Stock Exchange listing rules and clause 67 of the FMC Regulations) of such Capital Note together with a copy of these Conditions. For the avoidance of doubt, any such notice (or copy of these Conditions) does not constitute, comprise or evidence such Capital Note.

5.6 Notices: All notices given by Noteholders pursuant to these Conditions shall be irrevocable.

SUBORDINATION PROVISIONS OF THE TRUST DEED

Set out below are the provisions of the Trust Deed relating to subordination of the Capital Notes.

“3.5 No Enforcement by Supervisor or Noteholders:

- (a) Neither the Supervisor nor any Noteholder shall be entitled to ask, demand, sue or prove for, take or receive, directly or indirectly, whether by exercise of set-off, counterclaim or in any other manner any payment of or in respect of:
 - (i) the Capital Notes from the Company except after the commencement of the Liquidation of the Company (whether or not Fletcher Building is also in Liquidation); or
 - (ii) the Guaranteed Indebtedness from Fletcher Building except after the commencement of the Liquidation of Fletcher Building (whether or not the Company is also in Liquidation),

and then, in the case of a Noteholder, only as may be necessary to preserve the claim thereto of such Noteholder in such Liquidation.

- (b) Notwithstanding paragraph (a) of this clause, after the commencement of the Liquidation of the Company or Fletcher Building, as applicable, any amount, other than a payment by the Supervisor pursuant to clause 3.8(c), which a Noteholder may receive on account of the Capital Notes, whether in or upon the Liquidation of the Company or Fletcher Building, as applicable, or for any other reason whatsoever, shall be paid to the Company or Fletcher Building, as applicable, to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of the Company or Fletcher Building, as applicable, to the relevant Senior Creditors according to their respective rights

and interests and, pending payment thereof to the Company or Fletcher Building, as applicable, any such amount received by a Noteholder shall be held by the Noteholder on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid.

- (c) If, whether before or after the commencement of the Liquidation of the Company or Fletcher Building and notwithstanding paragraphs (a) and (b) of this clause, a Noteholder becomes entitled to, or does, exercise any right of set-off, counterclaim or other such remedy in respect of any amount owing by the Noteholder to the Company or Fletcher Building, as applicable, the Noteholder will pay to the Company or Fletcher Building, as applicable, an amount equal to the amount in respect of which such right is exercised, such amount to be held by the Company or Fletcher Building, as applicable, upon the trusts specified in paragraph (b) of this clause and, pending payment thereof to the Company or Fletcher Building, as applicable, the Noteholder shall hold such amount on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid.

3.6 Contracts (Privity) Act 1982:

- (a) For the purposes of the Contracts (Privity) Act 1982, but subject to (b) below, this clause 3 is intended to confer a benefit upon, and be enforceable by, the Senior Creditors of each of the Company and Fletcher Building directly.
- (b) For the purposes of section 6 of the Contracts (Privity) Act 1982, it is agreed that any amendments made to this Deed in accordance with clause 9 shall be binding upon Senior Creditors of each of the Company and Fletcher Building whether or not they have consented to such amendment.

3.7 Liquidation of Company: No Noteholder shall claim or prove in the Liquidation of the Company or Fletcher Building for any amount owing to such Noteholder under any Capital Note or this Deed to the extent that the Supervisor has claimed or proved for, or has determined to claim or prove for, such amount in such Liquidation on behalf of such Noteholder, and any claim or proof made contrary to this clause 3.7 shall be withdrawn by such Noteholder.

3.8 Distribution on Liquidation: Any amount received by the Supervisor under or in respect of this Deed or the Capital Notes in or upon any Liquidation of the Company or Fletcher Building shall be applied, and pending such application shall be held by the Supervisor upon trust to be applied:

- (a) First, in payment or retention of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Supervisor and of all remuneration and other moneys payable to the Supervisor as provided in this Deed;
- (b) Secondly, in payment to the Company or Fletcher Building, as applicable, to be held by it upon trust to apply the same in or towards the discharge of the indebtedness of the Company or Fletcher Building, as applicable, to the Senior Creditors of the Company or Fletcher Building, as applicable, according to their respective rights and interests and, pending payment thereof to the Company or Fletcher Building, as applicable, any such amount received by the Supervisor shall be held by it on trust to pay the same to the Company or Fletcher Building, as applicable, to be held on the trusts aforesaid;
- (c) Thirdly, subject to the indebtedness of the Company or Fletcher Building, as applicable, to the Senior Creditors of the Company or Fletcher Building, as applicable, having been paid or satisfied or provided for in full (for which purpose the Supervisor may rely upon any written advice from the Liquidator of the Company or Fletcher Building, as applicable) and subject to the claims of creditors of the Company or Fletcher Building, as applicable, whose claims

(including the claims of holders of the Fletcher Building Capital Notes) rank, or are intended or expressed to rank, pari passu with the claims of the Noteholders in or towards payment to the Noteholders, pari passu in proportion to the Principal Amounts of the Capital Notes held by the respective Noteholders, of the aggregate Liquidation Amounts in respect of the Capital Notes held by each Noteholder; and

- (d) Fourthly, in payment of the surplus (if any) of such moneys to the Company or Fletcher Building, as applicable, or to such other person as may be lawfully entitled thereto.

3.9 Payments to Liquidator of Company or Fletcher Building: At any time after the commencement of the Liquidation of the Company or Fletcher Building, as applicable, the Supervisor and any Noteholder may satisfy its obligations under clause 3.5 and, in the case of the Supervisor, under paragraphs (b) and (c) of clause 3.8, by paying any amounts referred to in such provisions to the Liquidator of the Company or Fletcher Building, as applicable, with instructions to the Liquidator to effect such application as is required by such provisions, and any such payment shall be a complete discharge of such obligations."

SCHEDULE 3

MEETINGS OF NOTEHOLDERS

It is recorded that, except to the extent that this Schedule 3 expressly provides otherwise, pursuant to clause 77 of the FMC Regulations, Schedule 11 to the FMC Regulations shall govern meetings of Noteholders and proceedings at those meetings.

1. Convening Meetings:

- (a) The Company or the Supervisor at any time may, and the Company and the Supervisor upon a request in writing by Noteholders holding together not less than 5% of the nominal value of the Capital Notes and, in the case of the Company only, on the written request of the Supervisor must, convene a meeting of the Noteholders.
- (b) The Company shall, on the written request of a person authorised by the FMC Regulations, convene a meeting of the Noteholders.
- (c) Meetings will be held in Auckland, or such other place as the Supervisor approves.
- (d) Any request by Noteholders holding together not less than 5% of the nominal value of the Capital Notes to convene a meeting must state the nature of the business proposed to be dealt with at the meeting.

2. Notice to Noteholders and Others: The Company will ensure that notice is given to every Noteholder entered in the Register at the close of business 14 days prior to the date of dispatch of the notice by ordinary post to the address last entered in the Register, to the Supervisor, to every director of the Company, to the auditor of the Company and, if the Capital Notes are quoted thereon, to the Stock Exchange.

3. Notice of Meeting:

- (a) At least 15 working days' notice (excluding the day on which the notice is given and including the day on which the meeting is held) specifying the day, time and place of meeting must be given. Such notice need not contain the agenda of the meeting, but must state:
 - (i) the nature of the business to be transacted at the meeting in sufficient detail to enable a Noteholder to form a reasoned judgment in relation to it;
 - (ii) the text of any Special Resolution to be submitted to the meeting; and
 - (iii) the right of a Noteholder to appoint a proxy.
- (b) If a Special Resolution is to be submitted to the meeting, the Company will provide a draft of the proposed notice of meeting to the Supervisor at least 10 working days (or such shorter period agreed by the Supervisor) before the notice is to be delivered under sub-paragraph (a) above. The notice of meeting must be accompanied by a document containing the Supervisor's comments on the proposed Special Resolution (provided those comments are provided to the Company at least 5 working days (or such shorter period agreed by the Company) before the notice is to be delivered under sub-paragraph (a) above).
- (c) The provisions of clauses 2(5) and 2(6) of Schedule 11 to the FMC Regulations shall apply for the purposes of any irregularity in a notice of meeting or any accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any Noteholder.

4. Chairman: A person (who may, but need not, be a Noteholder) nominated in writing by the Supervisor will be entitled to chair every such meeting, but if no such nomination is made, or if at any meeting the person nominated is not present within 15 minutes after

the time appointed for the holding of such meeting, the Noteholders present must choose one of their number to chair the meeting.

5. **Quorum:** No business may be transacted at a meeting of Noteholders if a quorum is not present. A quorum for a meeting of Noteholders at which a Special Resolution is to be submitted is present if Noteholders or their proxies are present or have cast votes (pursuant to clause 10 of this Schedule 3 and/or clause 11 of Schedule 11 to the FMC Regulations) who hold Capital Notes with a combined nominal value of not less than 25% of the nominal value of the Capital Notes held by those Noteholders who are entitled to vote. A quorum for any other business at a meeting of Noteholders is present if at least 2 Noteholders or their proxies are present.

6. **Lack of Quorum and Adjournment:**

- (a) The provisions of clause 5(5) of Schedule 11 to the FMC Regulations shall apply for the purposes where a quorum is not present within 30 minutes after the time appointed for any meeting.
- (b) The chairman may with the consent of (and shall if directed by) any meeting adjourn the same from time to time and from place to place, but no business may be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (c) It is not necessary to give notice of any adjourned meeting except that notice of any meeting adjourned through lack of a quorum must be given in the same manner as notice of an original meeting and such notice must state the quorum required at such adjourned meeting.

7. **Attendance and Voting at Meetings:**

- (a) Except for the Supervisor, the Company and their representatives (who may attend but may not vote unless also a Noteholder), no person will be entitled to attend and vote at any meeting of the Noteholders or to join with others in requesting the convening of any such meeting unless he is a person registered as Noteholder on the Register or is a representative of such person. The Supervisor may be heard at any meeting of Noteholders on any part of the business of the meeting that concerns the Supervisor's functions or the Noteholders for whom the Supervisor is acting.
- (b) In this clause, a "representative" of a Noteholder means:
 - (i) in the case of a Noteholder being an individual a person appointed by an instrument by way of proxy or by power of attorney;
 - (ii) in the case of a Noteholder being a corporation either:
 - (A) a person appointed by an instrument by way of proxy or by power of attorney; or
 - (B) a person authorised pursuant to paragraph 10 of the First Schedule to the Companies Act 1993 (or equivalent provision in the Noteholder's constitution), or in the case of a corporation sole a person authorised pursuant to its constitution; or
 - (iii) a person upon whom the ownership of a Noteholder's Capital Note has devolved by reason of his being a legal representative or an assignee in bankruptcy or liquidator of the Noteholder, or such person's representative appointed or authorised under (i) or (ii) above.
- (c) At a meeting, the persons registered as Noteholders in the Register at the Proxy Closing Time will be exclusively entitled to vote in respect of Capital Notes recorded in their name, in person or by representative. For the purpose of establishing voting entitlements at a meeting, the Register will be closed as of

close of business on the business day immediately preceding the day on which the Proxy Closing Time falls and will remain closed until after the relevant meeting has been closed or adjourned.

8. Proxies

- (a) A Noteholder may exercise the right to vote either by being present in person or by proxy.
- (b) A proxy for a Noteholder is entitled to attend and be heard at a meeting of Noteholders as if the proxy were the Noteholder.
- (c) A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice (if relevant), sent by the Noteholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- (d) A Noteholder may appoint more than 1 proxy for a particular meeting, provided that more than 1 proxy is not appointed to exercise the rights relating to a particular Note or Notes held by the Noteholder.
- (e) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at an address specified in the Company's proxy appointment form (or otherwise as permitted by that form) by the Proxy Closing Time.
- (f) Notwithstanding subclause (e) above, a proxy is effective despite a failure to comply with a requirement in subclause (e) if the person who is authorised to receive and count the votes at the meeting waives the requirement.
- (g) A proxy will, unless it states otherwise, be valid for any adjournment of the meeting as well as for the meeting to which it relates and need not be witnessed. Notwithstanding any provision contained in an instrument of proxy, no instrument of proxy will be valid after the expiration of 12 months from the date of its execution, although this provision does not apply to the appointment of an attorney or representative otherwise than by an instrument of proxy.
- (h) An instrument of proxy in favour of:
 - (i) the chairman of the Company; or
 - (ii) the chairman of the meeting, or "the chairman",(howsoever expressed) will be valid and effectual as though it were in favour of a named person and shall in the case of subparagraph (i) above constitute the person holding the office of the chairman of the Company and in the case of subparagraph (ii) above the person who chairs the meeting for which the proxy is used (whether an adjournment or not) the lawful proxy of the appointer.

9. **Rights of Representatives:** A representative of a Noteholder will have the right to demand or join in demanding a poll and shall (except and to the extent to which the representative is specially directed to vote for or against any proposal) have power generally to act at the meeting for the Noteholder concerned.

10. Voting Procedure and Polls:

- (a) A resolution put to the vote of a meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or the Supervisor or by one or more Noteholders holding or representing not less than five percent of the nominal value of the Capital Notes. Unless a poll is so demanded a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- (b) On a show of hands each person present at the meeting and entitled to vote (whether personally, by proxy or as a representative) will have one vote only. On a poll every Noteholder who is present in person, by proxy or by a representative will have one vote for each dollar of the Principal Amount of every Capital Note held by the Noteholder.
 - (c) If a poll is required, it will be taken in such manner as the chairman may direct and the result of such poll will be deemed to be the resolution of the meeting at which the poll was required.
 - (d) In the case of an equality of votes whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded will not be entitled to a casting vote in addition to the votes (if any) to which the chairman may be entitled as a Noteholder or on behalf of Noteholders.
 - (e) A poll demanded on the election of a chairman or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken either immediately or at such time (not being more than 30 days from the date of the meeting) and place as the chairman may direct. The result of such poll will be deemed to be the resolution of the meeting at which the poll was demanded. No notice need be given of a poll.
 - (f) The demand for a poll will not prevent the continuance of a meeting for the transaction of business other than the question on which the poll has been demanded.
 - (g) On a poll, votes may be given either personally or by representative, and a person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.
 - (h) In the case of joint Noteholders, the vote of the senior who tenders a vote, whether in person or by representative, will be accepted to the exclusion of the votes of the other joint Noteholders and for this purpose seniority will be determined by the order in which the names stand in the Register in respect of the joint holding.
 - (i) A vote given in accordance with the terms of an instrument of proxy or power of attorney or other form will be valid notwithstanding the previous death, insanity or (in the case of a corporation) liquidation of the principal or revocation of the proxy or power of attorney or other form of appointment or of the authority under which the proxy was executed or the transfer of the Capital Notes in respect of which the vote is given provided that no intimation in writing of such death, insanity, liquidation, revocation or transfer is received by the Supervisor or the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
 - (j) A resolution passed at a meeting of the Noteholders duly convened and held in accordance with this Deed will be binding upon all the Noteholders whether present or not at such meeting.
11. **Special Resolutions:** A meeting of the Noteholders, in addition to the powers expressed in this Deed, but without prejudice to any powers conferred on the Supervisor by this Deed, has the following powers exercisable by Special Resolution namely:
- (a) to sanction any proposal by the Company for any modification, abrogation, variation of, or arrangement in respect of, the rights of the Noteholders against it or Fletcher Building arising under this Deed or the Capital Notes;
 - (b) to assent to any proposal for modification of any of the provisions contained in this Deed which shall be proposed by the Company;

- (c) to authorise any person or persons to concur in and execute all such documents and do all such acts and things as may be necessary to carry out and give effect to any Special Resolution;
 - (d) to discharge or exonerate any person or persons from any liability in respect of any act or omission for which such person or persons may have become responsible under this Deed or the Capital Notes;
 - (e) to give any authority, direction or sanction which under the provisions of this Deed or the Capital Notes is required to be given by Special Resolution;
 - (f) to request the removal of any supervisor of this Deed and to approve the appointment of a new supervisor;
 - (g) to appoint any persons (whether or not Noteholders) as a committee or committees to represent the interest of the Noteholders and to confer upon such committee or committees any powers or discretions which the Noteholders could themselves exercise by Special Resolution; and
 - (h) to direct or request the Supervisor to take such action or do such things as the Supervisor may lawfully do under this Deed and to authorise the Supervisor to deduct its costs and expenses from any amount received by the Supervisor on account of Noteholders, to the extent such additional authority may be required.
12. **Minutes:** Minutes of all resolutions and proceedings at every meeting of Noteholders must be made by the Company and duly entered in records to be from time to time maintained for that purpose by the Supervisor. Any such minutes signed by the chairman of the meeting at which such resolutions were passed or proceedings transacted, or by the chairman of the next succeeding meeting of the Noteholders, will be prima facie evidence of the matters recorded in them. Until the contrary is proved, every meeting whose proceedings have been so minuted and signed will be deemed to have been duly held and convened and all resolutions passed or proceedings transacted to have been duly passed and transacted. The minutes must be given by the Company to the Supervisor as soon as possible after each meeting.
13. **Class Meetings:** If and whenever the Company shall have issued and have outstanding any Capital Notes which are not identical and do not form one single class then those Capital Notes which are in all respects identical shall be deemed to constitute a separate class of the Capital Notes and the foregoing provisions of this Schedule shall have effect subject to the following modifications:
- (a) a resolution which in the opinion of the Supervisor effects one class only of the Capital Notes shall be deemed to have been duly passed if passed at a separate meeting of the Noteholders of Capital Notes of that class;
 - (b) a resolution which in the opinion of the Supervisor affects more than one class of the Capital Notes but does not give rise to a conflict of interest between the Noteholders of Capital Notes of any of the class so affected shall be deemed to have been duly passed if passed at a single meeting of the Noteholders of the Capital Notes of all classes so affected;
 - (c) a resolution which in the opinion of the Supervisor affects more than one class of the Capital Notes and gives or may give rise to a conflict of interest between the Noteholders of the Capital Notes of one class or group of classes so affected and the Noteholders of the Capital Notes of another class or group or so affected shall be deemed to have been duly passed only if in lieu of being passed at a single meeting of the Noteholders of the Capital Notes of all such classes it shall be duly passed at separate meetings of the Noteholders of the Capital Notes of each class or group of classes so affected; and
 - (d) to all such meetings as aforesaid all the preceding provisions of this Schedule shall mutatis mutandis apply as though references therein to Capital Notes and

Noteholders were references to the Capital Notes of the class or group of classes in question and to the Noteholders of such Capital Notes respectively.

14. **Resolution in Writing:** The provisions of clause 78 of the FMC Regulations shall apply for the purposes of any resolutions in writing passed in lieu of a meeting.

SCHEDULE 4

SECURITIES REGULATIONS

For the purposes of regulation 39A of the Securities Regulations:

1. Corporate form

The Company is a limited liability company incorporated under the Companies Act 1993.

2. Governance

The Company must comply with:

- (a) all applicable laws relating to governance matters;
- (b) its constitution as is in force from time to time;
- (c) the applicable terms this Deed and any Supplemental Deed from time to time; and
- (d) subject to the terms of any applicable waiver or ruling, the governance requirements prescribed by the rules of any stock exchange on which it is listed or has securities quoted.

3. Periodic Reporting

The frequency with which the Company must provide periodic reports to the Supervisor (subject to the Supervisor's rights to require additional reporting under Schedule 15 of the Securities Regulations), and the content of these reports, are set out in clauses 6.3 and 6.4(b).

4. Meetings

The frequency of, the procedure for convening and holding, the business to be conducted at, and the voting rights at meetings of Noteholders are set out in clause 9 and Schedule 3.

5. Supervisor

The terms relating to the appointment of the Supervisor are set out in clause 13.3.

- (a) The terms relating to the removal from office of the Supervisor are set out in clauses 13.1, 13.2 and 13.3.
- (b) In addition to the powers and duties of the Supervisor prescribed by law, the terms relating to the powers and duties of the Supervisor are as set out in this Deed including, without limitation, in clauses 4.6, 7, 8 and 10.2.