

Transfer Deed

Fletcher Building Limited

and

Fletcher Building Industries Limited

and

Perpetual Trust Limited

Date 28 March 2011

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
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This **Transfer Deed** is made on 28 March 2011

- between** (1) **Fletcher Building Limited (Fletcher Building)**
- and** (2) **Fletcher Building Industries Limited (Fletcher Building Industries)**
- and** (3) **Perpetual Trust Limited** (the **Trustee**, which includes its assigns and successors)

Introduction

Pursuant to an extraordinary resolution passed on 25 March 2011, Fletcher Building, Fletcher Building Industries and the Trustee agree to the transfer by Fletcher Building of its rights and obligations as Issuer of Capital Notes to Fletcher Building Industries.

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:

Effective Date means the date of this Deed;

Fletcher Building Industries Capital Notes means capital notes issued by Fletcher Building Industries pursuant to a trust deed dated 12 November 2002 between Fletcher Building Industries, Fletcher Building and the Trustee as supplemented by supplemental trust deeds dated 21 November 2008 and 16 March 2009;

Guarantee means the guarantee and indemnity given by Fletcher Building in clause 4 of the Trust Deed; and

Trust Deed means the amended and restated trust deed dated 24 September 2001 between Fletcher Building and the Trustee, as supplemented by the supplemental trust deed dated 16 March 2009 and an amendment deed dated on or about the date of this Deed, each between Fletcher Building and the Trustee.

1.3 Construction

In this Deed, unless the context otherwise requires:

- (a) A reference to any **document**, including this Deed, includes a reference to that document as amended or replaced from time to time.
- (b) A reference to a **party** to this Deed or any other document includes that party's successors and permitted assigns.

- (c) Headings are for convenience only and will be ignored in construing any matter relating to this Deed.

2. Transfer and defeasance

2.1 Transfer and defeasance

On the Effective Date Fletcher Building's rights and obligations as Issuer of the Capital Notes are transferred to and assumed by Fletcher Building Industries and are defeased with the effect that:

- (a) Fletcher Building Industries assumes all of Fletcher Building's rights and obligations as Issuer of the Capital Notes;
- (b) Fletcher Building Industries succeeds to and becomes bound by all the terms of the Trust Deed as if it had originally executed the Trust Deed in the capacity as Issuer of the Capital Notes;
- (c) The reference to Fletcher Building in the definition of Issuer in the Trust Deed is to be read and construed as if it were a reference to Fletcher Building Industries; and all references in the Trust Deed to Fletcher Building in its capacity as Issuer are to be read and construed as if they were references to Fletcher Building Industries as Issuer;
- (d) Fletcher Building Industries may exercise all of Fletcher Building's rights as Issuer under the Trust Deed;
- (e) Fletcher Building Industries will perform all of Fletcher Building's obligations as Issuer under the Trust Deed; and
- (f) Fletcher Building Industries accepts liability for any breach of the Trust Deed by Fletcher Building in its capacity as Issuer under the Capital Notes which occurs prior to the Effective Date.

2.2 Trustee Consent

The Trustee consents to the transfer and defeasance of Fletcher Building's rights and obligations as Issuer of the Capital Notes in accordance with clause 2.1.

2.3 Fletcher Building consent to Guarantee

Fletcher Building consents to the Guarantee becoming effective on the Effective Date.

2.4 Confirmation of priority

Each of Fletcher Building Industries and Fletcher Building confirms that from (and including) the Effective Date, their respective obligations as Issuer of the Capital Notes and guarantor under the Guarantee are intended to, and shall, rank *pari passu* with their respective obligations to the holders of the Fletcher Building Industries Capital Notes, except to the extent expressly provided in the terms and conditions relating to the Fletcher Building Industries Capital Notes.

2.5 Confirmation of Trust Deed

The parties agree that from (and including) the Effective Date:

- (a) the Trust Deed as amended by this clause 2 will continue in full force and effect, as restated 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. Representations

The representations given by the Issuer and Fletcher Building in clause 6.1 of the Trust Deed (as amended and restated):

- (a) shall be deemed to be repeated and given also in relation to this Deed, on the Effective Date; and
- (b) are given as at the date of this Deed, in relation to this Deed alone (mutatis mutandis).

4. Trustee holds for benefit of Noteholders

4.1 Benefit of Noteholders

The Trustee takes and holds the benefit of the covenants given to it by Fletcher Building and Fletcher Building Industries under this Deed for the Noteholders generally.

4.2 Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982, this Deed is intended to confer a benefit upon, and be enforceable by, the Noteholders on the terms set out in the Trust Deed.

5. Miscellaneous

5.1 Costs

Each of Fletcher Building and Fletcher Building Industries will jointly and severally pay or reimburse the Trustee upon demand for all reasonable expenses on a full indemnity basis which are incurred by or on behalf of the Trustee in connection with:

- (a) the preparation, execution, delivery and administration of this Deed;
- (b) any action required of the Trustee under clause 2.2 or 5.2;
- (c) the exercise or attempted exercise by the Trustee of any right under this Deed; and
- (d) the granting of any waiver or consent under, or the giving or any variation or release of, this Deed.

5.2 Further assurance

Each party must at its own expense (subject to clause 5.1(b) and, in the case of the Trustee, to the terms of the Trust Deed) and within a reasonable time of being requested by another party to do so, do all things and execute all documents that are reasonably necessary to give full effect to this Deed.

5.3 Trustee Indemnity

The provisions of clause 10 of the Trust Deed are incorporated, mutatis mutandis, in this Deed.

5.4 Amendments to this Deed

An amendment to this Deed will only be effective if it is in writing and signed by each party.

5.5 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

5.6 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 Fletcher Buildings' or the Trustee's 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 Fletcher Buildings' or the Trustee's solicitors.

5.7 Governing law

This Deed is governed by and is to be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Execution

Executed and delivered as a deed.

Fletcher Building Limited by

Director/Authorised Signatory

Print Name

Witness to both signature(s)
(if not signed by two directors)

Print Name

Occupation

Address

Director/Authorised Signatory

Print Name

**Fletcher Building Industries
Limited** by

Director/Authorised Signatory

Print Name

Witness to both signature(s)
(if not signed by two directors)

Print Name

Occupation

Address

Director/Authorised Signatory

Print Name

Perpetual Trust Limited by

Director

Director

Print Name

Print Name

Schedule: Restated Trust Deed

Restated Trust Deed

relating to

issues of unsecured subordinated Capital Notes (as amended and restated on 28 March 2011)

Fletcher Building Industries Limited

Issuer of Capital Notes

and

Fletcher Building Limited

Guarantor of Capital Notes and as issuer of Fletcher Building Shares on conversion

and

Perpetual Trust Limited

Trustee for Noteholders

Date 28 March 2011

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
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This **Restated Trust Deed** is made on 28 March 2011

- between** (1) **Fletcher Building Industries Limited (AK/12485545)** (in its capacity as issuer of the Capital Notes, the **Issuer**)
- and** (2) **Fletcher Building Limited (AK/1104175)** (in its capacity as guarantor of the Capital Notes and as issuer of Fletcher Building Shares on conversion, **Fletcher Building**)
- and** (3) **Perpetual Trust Limited** (the **Trustee**, which includes its assigns and successors)

Recitals

- A. The Issuer has issued the Existing Capital Notes constituted as provided in this Deed.
- B. Fletcher Building has, other than where the Issuer of the Capital Notes is Fletcher Building Limited, agreed to guarantee all indebtedness of the Issuer 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.
- C. Because the Capital Notes have been, and may in the future be, offered to members of the public in New Zealand, the Securities Act 1978 and Securities Regulations 1983 require the appointment of a trustee in respect of the Capital Notes and the execution by the Issuer and the Trustee of a trust deed.
- D. The Trustee has agreed to act as trustee on behalf of the Noteholders of the Capital Notes on the terms and conditions of this Deed.
- E. The Capital Notes are unsecured subordinated indebtedness of the Issuer and the Guaranteed Indebtedness is unsecured subordinated indebtedness of Fletcher Building. The claims of the Noteholders will, in a Liquidation of the Issuer, rank ahead of shareholders of the Issuer and, in a Liquidation of Fletcher Building, rank ahead of shareholders of Fletcher Building, but behind the claims of all other creditors of the Issuer 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:

Amendment Deed means the amendment deed dated on or about 28 March 2011 between Fletcher Building Limited (in its capacity as issuer of the Capital Notes and in its capacity as guarantor of the Capital Notes and as issuer of Fletcher Building Shares on conversion) and Perpetual Trust Limited, and relating to an amended and restated trust deed dated 24 September 2001 between Fletcher Building Limited and Perpetual Trust Limited (which deed was supplemented by a supplemental trust deed dated 16 March 2009);

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

Conditions means in relation to:

- (a) the Existing 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 Existing Capital Notes;

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

Election Date in relation to:

- (a) the Existing 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;

Existing Capital Notes means the capital notes issued by the Issuer, constituted by this Deed and which are for the time being outstanding and includes the relevant Conditions applicable to such capital notes;

Extraordinary Resolution means a resolution passed at a meeting of the Noteholders duly convened and held by a majority consisting of not less than three-quarters of the votes cast thereon or, if a poll is required, by not less than three-quarters of the votes cast on the poll;

First Interest Date means in relation to any Capital Note, the first Interest Date as specified in the relevant Supplemental Deed and/or prospectus, investment statement or other offering document (however described), as the same may be modified from time to time in accordance with this Deed;

Fletcher Building capital notes means capital notes issued by Fletcher Building on substantially the same underlying terms as the Capital Notes, 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 Issuer constituted by a Supplemental Deed entered into after the date of the Amendment 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 Issuer to the Trustee or to the Noteholders under this Deed in respect of the Capital Notes;

Interest Date in relation to:

- (a) the Existing 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 Existing 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;

Issuer means Fletcher Building Industries Limited in its capacity as issuer of the Capital Notes or any other person substituted for the Issuer under clause 11 or otherwise assuming the rights and obligations of the Issuer as issuer of the Capital Notes and under this Deed;

Liquidation in relation to the Issuer or Fletcher Building means the dissolution or liquidation of the Issuer or Fletcher Building, as applicable, in its jurisdiction of incorporation and any other analogous proceedings whereby the Issuer 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 Issuer 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 Issuer or Fletcher Building, as applicable, or the acquirer of substantially all of the voting shares of the Issuer or Fletcher Building, as applicable, enters into a deed supplemental to this Deed under which the obligations of the Issuer 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 Trustee 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;

Listing Rules means the listing rules of NZX in force from time to time;

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;

NZDX means the debt security market operated by NZX;

NZSX means the main board equity security market operated by NZX;

NZX means NZX Limited;

Original Trust Deed means the trust deed dated 20th April 1990 between Fletcher Challenge Industries Limited, Fletcher Challenge Limited and AMP Perpetual Trustee Company N.Z. Limited (now Perpetual Trust Limited) as trustee for the Noteholders (which deed was varied by deeds of variation dated 31 August 1994 and 3 April 1995 and supplemented by supplemental trust deeds dated 17 May 1991, 4 June 1992, 16 April 1993, 3 April 1995, 24 January 2001 and 16 March 2009), as amended and restated pursuant to amending and restating deeds dated 27 August 1999, 25 May 2000, 24 January 2001 and 24 September 2001;

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 Fletcher Building to maintain the Register;

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

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

Stock Exchange means:

- (a) in relation to Fletcher Building Shares, the NZSX; and
- (b) in relation to the Capital Notes, the NZDX,

each operated by NZX (and includes any alternative or substitute market for Fletcher Building Shares or the Capital Notes (as applicable) or other arrangement in New Zealand on or through which Fletcher Building Shares or the Capital Notes (as applicable) may be freely traded and which is generally regarded as the principal such market or arrangement for the trading of Fletcher Building Shares or the Capital Notes (as applicable) in New Zealand);

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

Transaction Statement means the statement referred to in Condition 5.5 of Schedule 2; 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;
- (b) Schedules, clauses and paragraphs are to the schedules, clauses and paragraphs of this Deed;
- (c) "this Deed" means the Original Trust Deed as amended and restated in this deed and 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 Issuer or Fletcher Building, as applicable, 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 Issuer 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.

2. The Capital Notes

2.1 Constitution of Capital Notes

The Issuer has issued the Existing Capital Notes.

2.2 Further Issues

The Issuer 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, create indebtedness as Further Capital Notes either:

- (a) ranking *pari passu* with the Existing 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
- (b) upon such other terms as to interest rates or payment dates, conversion, ranking (whether in a Liquidation or otherwise), premium and otherwise as the Issuer may determine at the time of issue.

Any further indebtedness that is Further Capital Notes shall be constituted by a Supplemental Deed.

2.3 Conditions of Issue

Each Capital Note shall be subject to the applicable Conditions. The Conditions applicable

to the Existing 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 Issuer, Fletcher Building, the Trustee, 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 Issuer and Fletcher Building covenant with the Trustee 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 Trustee under this Deed of the relevant party.
- (c) The Trustee shall take and hold the benefit of the covenants given to it by the Issuer 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 Issuer, Fletcher Building nor the Trustee will have any further liabilities or obligations in respect of those Capital Notes or to the relevant Noteholders. The Issuer, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) may at any time purchase Capital Notes for its own account. Capital Notes so purchased by the Issuer, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) may be cancelled or reissued, as the Issuer elects. If cancelled, none of the Issuer, Fletcher Building or the Trustee will have any further liabilities or obligations in respect of those Capital Notes or to the relevant Noteholders.

2.9 Unclaimed Payment

If any payment made by the Issuer 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 Issuer has in the meantime received notice of a change of address to be entered in the Register) be paid to the Trustee 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 Issuer or Fletcher Building, as applicable, together with interest (if any) thereon, and the Issuer 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 Trustee or to any Noteholder by, or on behalf of, the Issuer or Fletcher Building is avoided by law such payment shall be deemed not to have discharged or affected the liability of the Issuer or Fletcher Building, as applicable, in respect of which that payment was made. In that event the Trustee, the Noteholders, the Issuer 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 Trustee, the Issuer or Fletcher Building to make any payment of or on account of tax payable by the Noteholder, the Trustee, the Issuer 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 Trustee alternatively by the Issuer and Fletcher Building (in respect of which the Issuer and Fletcher Building shall in turn be indemnified as aforesaid) and any moneys paid by the Trustee, the Issuer 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 Issuer or Fletcher Building, as applicable as a debt due to the Trustee, the Issuer or Fletcher Building, as applicable. Nothing herein contained shall prejudice or affect any other right or remedy of the Trustee, the Issuer 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 any Fletcher Building capital notes, except to the extent expressly provided in the terms and conditions relating to any Fletcher Building capital notes.

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 Issuer or Fletcher Building, in any way restrict the right of the Issuer 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 Issuer 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 Trustee is authorised and directed to concur with the Issuer 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 Trustee 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 Trustee'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 Trustee, or the rights and remedies of the Trustee in respect thereof; or
- (b) oblige the Trustee to acknowledge any personal liability to pay any amount which has not first been received by the Trustee in its capacity as Trustee under this Deed, and any such liability shall cease in respect of any amount so received and disbursed by the Trustee in good faith in the reasonable belief that the disbursement is authorised under this Deed.

3.5 No Enforcement by Trustee or Noteholders

- (a) Neither the Trustee 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 Issuer except after the commencement of the Liquidation of the Issuer (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 Issuer 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 Issuer or Fletcher Building, as applicable, any amount, other than a payment by the Trustee 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 Issuer or Fletcher Building, as applicable, or for any other reason whatsoever, shall be paid to the Issuer 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 Issuer or Fletcher Building, as applicable, to the relevant Senior Creditors according to their respective rights and interests and, pending payment thereof to the Issuer 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 Issuer 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 Issuer 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 Issuer or Fletcher Building, as applicable, the Noteholder will pay to the Issuer 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 Issuer or Fletcher Building, as applicable, upon the trusts specified in paragraph (b) of this clause and, pending payment thereof to the Issuer or Fletcher Building, as applicable, the Noteholder shall hold such amount on trust to pay the same to the Issuer 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 Issuer 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 8.5 shall be binding upon Senior Creditors of each of the Issuer and Fletcher Building whether or not they have consented to such amendment.

3.7 **Liquidation of Issuer or Fletcher Building**

No Noteholder shall claim or prove in the Liquidation of the Issuer or Fletcher Building for any amount owing to such Noteholder under any Capital Note or this Deed to the extent that the Trustee 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 Trustee under or in respect of this Deed or the Capital Notes in or upon any Liquidation of the Issuer or Fletcher Building shall be applied, and pending such application shall be held by the Trustee 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 Trustee and of all remuneration and other moneys payable to the Trustee as provided in this Deed;
- (b) **Secondly**, in payment to the Issuer 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 Issuer or Fletcher Building, as applicable, to the Senior Creditors of the Issuer or Fletcher Building, as applicable, according to their respective rights and interests and, pending payment thereof to the Issuer or Fletcher Building, as applicable, any such amount received by the Trustee shall be held by it on trust to pay the same to the Issuer or Fletcher Building, as applicable, to be held on the trusts aforesaid;
- (c) **Thirdly**, subject to the indebtedness of the Issuer or Fletcher Building, as applicable, to the Senior Creditors of the Issuer or Fletcher Building, as applicable, having been paid or satisfied or provided for in full (for which purpose the Trustee may rely upon any written advice from the Liquidator of the Issuer or Fletcher Building, as applicable) and subject to the claims of creditors of the Issuer or Fletcher Building, as applicable, whose claims (including the claims of holders of any 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 Issuer or Fletcher Building, as applicable, or to such other person as may be lawfully entitled thereto.

3.9 **Payments to Liquidator of Issuer or Fletcher Building**

At any time after the commencement of the Liquidation of the Issuer or Fletcher Building, as applicable, the Trustee and any Noteholder may satisfy its obligations under clause 3.5 and, in the case of the Trustee, under paragraphs (b) and (c) of clause 3.8, by paying any amounts referred to in such provisions to the Liquidator of the Issuer 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 Issuer and Fletcher Building shall terminate on the date which is 80 years after the date of execution of the Original 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 Issuer, Fletcher Building and the Trustee hereunder, and any amounts which would, but for this provision, have been held on trust for the Senior Creditors of the Issuer or Fletcher Building shall be held on trust for the Issuer or Fletcher Building, as applicable, absolutely.

3.11 **Permitted payments and receipts**

Until the commencement of the Liquidation of the Issuer or Fletcher Building, the Issuer or Fletcher Building, as applicable, is entitled to pay and a Noteholder or the Trustee is entitled to receive payment from or on behalf of the Issuer or Fletcher Building, as applicable, of any amount payable under this Deed or in respect of the Capital Notes and the Trustee 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 Issuer or Fletcher Building of any such amount by the Issuer 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 **Effect**

The provisions of this clause 4 shall only take effect and become enforceable when the Issuer of the Capital Notes is not Fletcher Building Limited.

4.2 **Guarantee**

Subject to the provisions of clause 3 and clause 4.1, Fletcher Building unconditionally and irrevocably guarantees to the Trustee (in its own capacity and in its capacity as trustee on behalf of Noteholders) the due payment by the Issuer of the Guaranteed Indebtedness in accordance with the provisions of this Deed. Fletcher Building covenants with the Trustee 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 Fletcher Building capital notes in accordance with clause 2.12.

4.3 **Payment**

Fletcher Building undertakes that if, for any reason, the Issuer 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 Trustee.

4.4 Liability as sole principal debtor

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

4.5 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 Issuer 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 Issuer 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 Issuer from, this Deed or a security interest, guarantee, indemnity or other agreement (other than the release of Fletcher Building pursuant to clause 4.7); or
- (g) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Issuer 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 Issuer's obligations under any of them for any reason whatsoever, and whether or not known to the Trustee; or
- (i) the substitution of the Issuer or the transfer of the domicile of the Issuer pursuant to clause 11; or
- (j) any other matter or thing whatsoever.

As a separate and continuing undertaking, Fletcher Building unconditionally and irrevocably undertakes to the Trustee 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 Trustee within two business days of receiving a demand the amount which the Trustee 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 4.5.

4.6 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 Trustee.

4.7 Discharge of guarantee

The Trustee 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 Issuer a discharge of the obligations of Fletcher Building contained in this clause 4 whenever requested by the Issuer so to do, but any such discharge will be without prejudice to any indemnity given in favour of the Trustee for any unremedied breach or unperformed obligation of Fletcher Building under clause 4 of this Deed.

4.8 Suspense Account

All moneys from time to time received by the Trustee 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 Trustee on behalf of the Noteholders to prove for the whole of the Guaranteed Indebtedness in the event of the Liquidation of Fletcher Building.

4.9 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 Issuer, any right to require proceedings first against the Issuer 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 Issuer 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 (as defined in Condition 3.1(a) of Schedule 2), relevant Interest Dates and Election Date, all transfers or changes of ownership of Capital Notes and all cancellations of Capital Notes.

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 Trustee, the Noteholders, any shareholder of Fletcher Building and any person authorised in writing by any of such persons shall be at liberty at all reasonable times during usual office hours to inspect the Register and to take copies of and extracts from the same upon payment of a reasonable charge.

5.5 **Closure of Register**

Subject to clause 5.6, the Issuer 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 Issuer shall comply or procure compliance with all statutory requirements in respect of the Register.

5.7 **Audit**

The Register shall be kept by the Issuer and shall be audited by or to the satisfaction of the auditors annually.

5.8 **Register Conclusive**

The Trustee, the Issuer 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 Issuer 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 trusteeship 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 trusteeship in respect of Capital Notes and the Noteholders thereof as shown by the Register so corrected as from such date as the Trustee shall determine.

5.9 **No liability for trading under approved system**

The Trustee, the Issuer and Fletcher Building shall not be liable to the Issuer, 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 Issuer and Fletcher Building each represents and warrants to the Trustee 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 Issuer) issue the Capital Notes and to perform its obligations hereunder and (in the case of the Issuer) 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 Issuer) the Capital Notes;
- (d) its obligations under this Deed and (in the case of the Issuer) 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 Issuer) 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 Issuer Covenants

For so long as any Capital Notes are outstanding, the Issuer covenants with the Trustee that it will:

- (a) immediately notify the Trustee if the Issuer does not make payment of interest on the Capital Notes;
- (b) send copies to the Trustee of all notices given by it to Noteholders generally;
- (c) 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;
- (d) whenever so requested, give to the Trustee or any person authorised by the Trustee 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 Trustee under this Deed or imposed upon it by law, and for this purpose the Issuer will procure and facilitate the provision of information to the Trustee by the auditors of the Issuer under the procedures contemplated by section 50 of the Securities Act 1978, whether or not at the relevant time there are any outstanding Capital Notes which have been offered to the public;
- (e) 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; and
- (f) 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.

6.3 Issuer's Accounts and Reports of Directors

The Issuer covenants with the Trustee that, so long as any Capital Notes are outstanding, the Issuer will, not later than four months after the end of its financial years and half-years, deliver to the Trustee:

(a) Directors' Reports

A report signed by two directors on behalf of the directors of the Issuer 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):
 - (A) any matter has arisen relating to the Issuer and/or Fletcher Building and their respective subsidiaries which would materially and adversely affect the ability of the Issuer or Fletcher Building to perform its obligations under this Deed and (in the case of the Issuer) the Capital Notes;
 - (B) the Issuer 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);
 - (C) the Register has been duly maintained; and
 - (D) 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) Issuer'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 Trustee 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 Trustee, 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 Trustee, 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.

7. Trustee's Power to Remedy and Waive

7.1 Trustee May Remedy

If the Issuer 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 Trustee, it will be lawful, but not obligatory, for the Trustee to pay any such moneys or to procure compliance with this Deed or such Condition. All moneys so paid by the Trustee, and all costs charges and expenses incurred by the Trustee in so doing, will be payable by the Issuer or Fletcher Building, as applicable, to the Trustee upon demand in writing.

7.2 Waiver by Trustee

Subject to any direction or request given by the Noteholders, the Trustee may from time to time by notice in writing to the Issuer 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 Issuer or Fletcher Building of any of the provisions of this Deed or the Conditions, provided the Trustee is satisfied that the interests of the Noteholders will not be materially prejudiced as a result. Any such waiver will in no way affect the rights of the Trustee 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 Trustee shall not be deemed to have given any such waiver unless the waiver is given by the Trustee in writing.

8. Supplemental Powers and Discretions of Trustee

8.1 Supplemental Powers

In addition to the provisions of the law relating to trustees and to facilitate the discharge of its duties hereunder it is expressly declared that:

- (a) the Trustee 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, 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;
 - (ii) a certificate signed by any two directors on behalf of the directors of the Issuer 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

- (iii) 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 Trustee will not be responsible for 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 Trustee 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) the Trustee will not be responsible for the receipt or application by the Issuer 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;
- (d) the Trustee will be bound to take steps to ascertain whether or not the Issuer or Fletcher Building has committed any breach of the provisions of this Deed or any of the Capital Notes and cease to be entitled to assume without enquiry that no such breach is occurring or has occurred only upon:
 - (i) the Trustee receiving specific advice that a breach has, or appears to have, occurred or threatens to occur, from the directors of the Issuer or Fletcher Building or its auditors; or
 - (ii) the Trustee receiving notice of the commencement of Liquidation of the Issuer or Fletcher Building;
- (e) the Trustee will not be under any liability to the Noteholders whatsoever unless the Trustee has failed to show the degree of care and diligence required of it 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;
- (f) except as otherwise expressly provided in this Deed, the Trustee, 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;
- (g) the Trustee may, whenever it thinks it expedient in the interests of the Noteholders to do so:
 - (i) delegate at any time to any person any of the trusts powers authorities or discretions vested in the Trustee by this Deed which cannot conveniently be exercised by it or through its employees upon such terms and conditions (including the power to sub-delegate) as the Trustee 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 Issuer or Fletcher Building, or by or at the instance of any Noteholder;
- (h) the Trustee's powers to cause the remedying of any breach of the provision of this Deed shall be subject to any other provision of this Deed which is inconsistent with the

exercise of such powers;

- (i) any consent given by the Trustee for the purposes of this Deed may be given on such terms and conditions (if any) as the Trustee reasonably thinks fit;
- (j) subject to clause 8.2, the Trustee 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 Trustee by the Issuer 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 Trustee any such information;
- (k) the Trustee may determine whether or not a failure by the Issuer 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 is materially prejudicial to the interests of the Noteholders and any such determination shall be conclusive and binding upon the Issuer, Fletcher Building and the Noteholders; and
- (l) the Trustee shall have no duties and responsibilities under this Deed, other than under clause 3.5, to any Noteholder which is Fletcher Building, the Issuer or any of their subsidiaries.

8.2 Discretion to Consult Noteholders

In the event of any breach of the provisions of this Deed on the part of the Issuer or Fletcher Building or the occurrence of any circumstances which may result in such a breach which the Trustee reasonably considers may be materially prejudicial to the interests of the Noteholders the Trustee may, in its absolute discretion, require the Issuer to report the circumstances and nature of such breach and any other information concerning the Issuer or Fletcher Building which the Trustee 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 Trustee their preferences as to any exercise or non-exercise of the Trustee's powers under this Deed or as to any action or omission to act by the Trustee in relation to the breach or any other matter or thing and, if the Issuer fails to so report, the Trustee may, subject to clause 8.4, itself do so. Any such report shall be given in such manner as is considered by the Trustee to be the most practicable and expedient in all the circumstances.

8.3 Duty of Trustee

The Trustee's duty to monitor the Issuer 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 8.2 shall be the sole and exclusive duty of the Trustee under this Deed unless and until the Trustee shall receive:

- (a) a request or direction pursuant to this Deed to act or not to act in exercise of any of its powers under this Deed;
- (b) 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
- (c) an indemnity in the terms of clause 8.4.

8.4 Trustee Right to be Indemnified

The Trustee 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 Trustee shall first be

indemnified to its satisfaction against all actions, proceedings, claims and demands to which the Trustee 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.

8.5 Trustee May Concur in Alterations

The Trustee may concur with the Issuer and Fletcher Building in making any variation or addition to this Deed or the Conditions:

- (a) if in the opinion of the Trustee it is made to correct a manifest error, or is of a formal or technical nature, or is convenient for the purpose of obtaining or maintaining any quotation of the Capital Notes on the Stock Exchange and is not prejudicial to the general interests of the Noteholders; or
- (b) if it is authorised by an Extraordinary Resolution; or
- (c) if:
 - (i) it relates to the assumption by the Issuer of the payment obligations of Fletcher Building as issuer of any Fletcher Building capital notes; and
 - (ii) the payment obligations are guaranteed by Fletcher Building; or
- (d) if the Trustee is of the opinion that it is not, or is not likely to become, prejudicial to the interests of the Noteholders generally; or
- (e) if it is necessary or desirable to the Issuer becoming incorporated under the law in force in, or in any part of, another country.

8.6 Fiduciary Relationship

Nothing in this Deed prohibits the Trustee or its holding company or any of their subsidiaries or their officers or shareholders (all hereinafter in this clause 8.6, where the context permits, being included in the expression the **Trustee**) from being a Noteholder, creditor or shareholder of Fletcher Building, the Issuer or of any of their subsidiaries (all hereinafter in this clause 8.6 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 Trustee 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. Meetings of Noteholders

9.1 Regulations of Meetings

All meetings of Noteholders shall be convened and held in accordance with the provisions of Schedule 3.

9.2 Represent Noteholders

The Trustee 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.

10. Indemnity of Trustee

Without prejudice to the right of indemnity by law given to trustees the Trustee and each of its officers, servants or agents shall be entitled to be indemnified by the Issuer 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 Trustee 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 other than liabilities, expenses, actions, proceedings, costs, claims or demands arising out of fraud, wilful neglect, wilful breach of trust or dishonesty on the part of the Trustee or any of its officers, servants or agents (whether or not of the officer, servant or agent claiming to be indemnified) and the Trustee may retain and pay out of any moneys it holds pursuant to this Deed, all sums necessary to effect and satisfy that indemnity.

11. Substitution of Issuer

11.1 Conditions of Substitution

The Issuer shall have the power to substitute in its place as the Issuer under this Deed, any other company (any such substituted company being hereinafter called the **Substituted Issuer**), and the Trustee and Fletcher Building shall agree to such substitution provided that:

- (a) if Fletcher Building is not then the Issuer of the Capital Notes, the Substituted Issuer is Fletcher Building; or
- (b)
 - (i) a trust deed is executed or some other form of undertaking is given by the Substituted Issuer in form and manner reasonably satisfactory to the Trustee, agreeing to be bound by the terms of this Deed and the Capital Notes with any consequential amendments which the Trustee may deem to be appropriate as fully and effectually as if the Substituted Issuer had been named in this Deed and any Supplemental Deed as the Issuer in place of the Issuer (or of any previous substitute under this clause 11);
 - (ii) without prejudice to the generality of paragraph (i) hereof, where the Substituted Issuer 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 Trustee may reasonably require;
 - (iii) the Capital Notes remain convertible into Fletcher Building Shares in the manner provided in this Deed and the Conditions;
 - (iv) the Capital Notes remain guaranteed by Fletcher Building on the terms set out in this Deed;
 - (v) the directors of the Substituted Issuer certify that the Substituted Issuer is solvent at the time at which the said substitution is proposed to be effected, and the Trustee 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 Issuer or to compare the same with those of the Issuer (or any previous substitute under this clause 11);
 - (vi) without prejudice to the right of reliance of the Trustee under paragraph (v) above the Trustee is satisfied that the said substitution is not materially

prejudicial to the interests of the Noteholders generally; and

- (vii) without prejudice to the generality of paragraph (i) above, the Trustee 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 Trustee be materially prejudicial to the interests of the Noteholders generally.

11.2 Release

Any such agreement by the Trustee shall, if so expressed, operate to release the then current Issuer (hereinafter called the **Replaced Issuer**) 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 Trustee, the Replaced Issuer shall give notice thereof in a form previously approved by the Trustee to the Noteholders.

11.3 Transfer of Domicile

The Issuer may upon giving the Trustee 30 days notice in writing become incorporated under the law in force in, or in any part of, another country provided that the Issuer gives such reasonable undertakings or covenants in respect of taxes on such terms as the Trustee may reasonably require and the Trustee receives, in a form satisfactory to it, a legal opinion as to the enforceability of the Issuer's obligations under the Trust Deed and the Capital Notes from counsel acceptable to the Trustee in the Issuer's new country of incorporation.

12. Retirement and New Appointment of Trustee

12.1 Retirement of Trustee

The Trustee may retire at any time upon giving 90 days notice in writing to the Issuer, subject to the due appointment of a new trustee and the transfer to such new trustee of all moneys and investments held by the Trustee under this Deed.

12.2 Appointment of New Trustee

- (a) The power of appointing a new trustee or trustees of this Deed for the Noteholders of, and in respect of, the Capital Notes is vested in the Noteholders pursuant to an Extraordinary Resolution (who may also, by Extraordinary Resolution, remove a trustee) and in the Issuer but no trustee may be appointed by the Issuer unless such appointment is first approved by an Extraordinary Resolution of the Noteholders. Upon the Trustee notifying the Issuer that it wishes to retire, or upon the Issuer wishing to appoint a new trustee, the Issuer must promptly call a meeting of the Noteholders for the purpose of approving an appointment of a new trustee and if approval is given the Issuer may exercise its power of appointment.
- (b) If the Issuer, within 90 days of receiving notice of the Trustee's intention to retire, fails to call a meeting of the Noteholders as aforesaid or to exercise the power hereby vested in it of appointing a new trustee or new trustees then, in either case, the Noteholders may by Extraordinary Resolution exercise such power to the exclusion of the Issuer.

13. Trustee's Remuneration and Expenses

13.1 Basic Remuneration

The Issuer shall pay to the Trustee remuneration for its services as Trustee in accordance with the terms of any current agreement contained in letters exchanged between Fletcher Building and the Trustee.

13.2 Expenses

The Issuer will also pay all reasonable expenses on a full indemnity basis (including travelling expenses) incurred by or on behalf of the Trustee 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 Trustee of any power or discretion conferred on the Trustee by this Deed, or the performance of its duties, including the taking of any expert advice deemed necessary or expedient by the Trustee; and
- (c) the convening and holding of any meeting of Noteholders and carrying out of any directions or resolutions of such a meeting.

13.3 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 Issuer shall be wound up or the trusts of this Deed are in course of administration by or under the direction of the Court.

14. Notices

All notices to be given by the Trustee to the Issuer, Fletcher Building or a Noteholder or by the Issuer or Fletcher Building to the Trustee 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 Issuer:

810 Great South Road
Penrose
Auckland 1

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

- (b) in the case of Fletcher Building:

810 Great South Road
Penrose
Auckland 1

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

- (c) in the case of the Trustee:

Perpetual Trust Limited
Level 3, Perpetual Trust House
125 Albert Street
Auckland

Attention: Corporate Services Manager
Fax No: (09) 366 3299;

- (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 Issuer, Fletcher Building or the Trustee 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.

15. **Governing Law**

This Deed is governed by the laws of New Zealand.

16. **Discharge of Trust Deed**

The Trustee 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 Issuer so to do.

17. **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

Executed as a trust deed.

Fletcher Building Industries Limited (in its capacity as issuer of Capital Notes) by

Authorised Signatory

Print Name

Witness to both signatures

Print Name

Occupation

Address

Authorised Signatory

Print Name

Fletcher Building Limited (in its capacity as guarantor of Capital Notes and as issuer of Fletcher Building Shares on conversion) by

Authorised Signatory

Print Name

Witness to both signatures

Print Name

Occupation

Address

Authorised Signatory

Print Name

Signed on behalf of **Perpetual
Trust Limited** by

Authorised Signatory

Print Name

Witness to both signatures

Print Name

Occupation

Address

Authorised Signatory

Print Name

Schedule 1: Specific Terms of the Existing Capital Notes

1. Definitions

For the purposes of this Schedule:

"March 2012 Capital Note" means each Existing Capital Note that is designated as a March 2012 Capital Note;

"March 2015 Capital Note" means each Existing Capital Note that is designated as a March 2015 Capital Note; and

"March 2017 Capital Note" means each Existing Capital Note that is designated as a March 2017 Capital Note.

For the purposes of Schedule 2:

"Capital Note" means each March 2012 Capital Note, each March 2015 Capital Note or each March 2017 Capital Note; and

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

2. Specific Terms

(a) in respect of the March 2012 Capital Note:

- **"Election Date"** means 15 March 2012 and each subsequent New Election Date;
- **"Interest Date"** means First Interest Date and each 15 March and 15 September thereafter until the Final Interest Date and the Final Interest Date (as defined in the Conditions) or if any such date is not a business day, the next business day;
- **"Interest Rate"** means 7.50 percent per annum;

(b) in respect of the March 2015 Capital Note:

- **"Election Date"** means 15 March 2015 and each subsequent New Election Date;
- **"Interest Date"** means First Interest Date and each 15 March and 15 September thereafter until the Final Interest Date and the Final Interest Date (as defined in the Conditions) or if any such date is not a business day, the next business day;
- **"Interest Rate"** means 8.50 percent per annum;

(c) in respect of the March 2017 Capital Note:

- **"Election Date"** means 15 March 2017 and each subsequent New Election Date;
- **"Interest Date"** means First Interest Date and each 15 March and 15 September thereafter until the Final Interest Date and the Final Interest Date (as defined in the Conditions) or if any such date is not a business day, the next business day;
- **"Interest Rate"** means 7.50 percent per annum.

Schedule 2: Conditions of the Capital Notes

The Capital Notes have the benefit of, and are subject to the terms and conditions of, the amended and restated trust deed dated 24th September 2001 between Fletcher Building Limited and Perpetual Trust Limited (which deed was supplemented by a supplemental trust deed dated 16 March 2009 and amended and restated pursuant to an amendment deed dated on or about 28 March 2011) (the “**Trust Deed**”) and the provisions set out below. Copies of the Trust Deed may be inspected at the registered office of the Issuer, at the head office of the Trustee 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 Issuer 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 Issuer to redeem the Capital Notes by payment of the Liquidation Amount in accordance with Condition 2.2(b); and
 - (c) if the Issuer 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 Issuer and rank pari passu and without priority or preference among themselves. Other than where Fletcher Building Limited is the Issuer of the Capital Notes, the Issuer’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 Issuer’s directors, the directors of Fletcher Building, the Trustee or any person, other than Fletcher Building, guarantees the Issuer’s obligations under the Trust Deed or the Capital Notes in any way.

2.2 **Subordination:** The obligations of the Issuer or Fletcher Building to the Noteholder, and the rights of the Noteholder against the Issuer 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 Issuer or Fletcher Building, as applicable, in that in and upon the Liquidation of the Issuer or Fletcher Building, as applicable, the claims of the Noteholder against the Issuer 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 Issuer 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 Issuer 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 Issuer 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 Trustee and each Noteholder) restricting the remedies of the Trustee and the Noteholder in respect of the Capital Notes and providing that the Trustee and the Noteholder shall hold on trust various amounts in favour of the Senior Creditors of the Issuer 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 accruing daily from the date (the **"Issue Date"**) of its purchase by the first Noteholder (the **"Purchaser"**), 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 Issuer 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 Issuer 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) 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 Issuer 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 Issuer 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.

Except as provided in this Condition, the Issuer shall not be obliged to pay interest on any Interest Date but the Issuer 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 Issuer, in the case of the Issuer 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 Issuer 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 Issuer or Fletcher Building, as applicable, except to the extent that the Issuer 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 Issuer and Fletcher Building with such evidence as the Issuer 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 Issuer 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 Issuer 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 Issuer (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 Issuer does not receive an Election Notice from the Noteholder on or before the Notification Date; or
- (d) to the extent that the Issuer 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 Issuer 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 Issuer (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 Issuer 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 Issuer 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 Issuer does not receive an Early Election Notice from the Noteholder on or before the Early Notification Date; or
- (d) to the extent that the Issuer 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 Issuer 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 Issuer has elected to redeem or the Issuer, Fletcher Building or any subsidiary of Fletcher Building (or their nominee) has elected, pursuant to Condition 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 Trustee 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 Issuer 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 Issuer and agreed to by the Trustee; and
- (iv) the New Election Date (which shall be a business day) to be selected by the Issuer 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 Issuer by any three registered banks, selected by the Issuer and approved by the Trustee, at or about 11 a.m. on any relevant date or if, in the opinion of the Issuer, 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 Trustee after consultation with the Issuer, 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 Issuer shall have the option to redeem for cash on the Election Date or Early Election Date (as the case may be); and
- (ii) the Issuer, 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 Issuer 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 Issuer, 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 Issuer, 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 Issuer to redeem Capital Notes or of the Issuer, 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 any system approved under section 7(1) of the Securities Transfer Act 1991. The directors of the Issuer 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 Issuer 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 Issuer 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 Issuer 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:** Except as approved by the Issuer (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 Issuer, 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 **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 Issuer must issue to the transferee a statement recording certain details (including, without limitation, those specified in the Stock Exchange listing rules) 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 Trustee or Noteholders:

- (a) Neither the Trustee 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 Issuer except after the commencement of the Liquidation of the Issuer (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 Issuer 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 Issuer or Fletcher Building, as applicable, any amount, other than a payment by the Trustee 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 Issuer or Fletcher Building, as applicable, or for any other reason whatsoever, shall be paid to the Issuer 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 Issuer or Fletcher Building, as applicable, to the relevant Senior Creditors according to their respective rights and interests and, pending payment thereof to the Issuer 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 Issuer 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 Issuer 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 Issuer or Fletcher Building, as applicable, the Noteholder will pay to the Issuer 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 Issuer or Fletcher Building, as applicable, upon the trusts specified in paragraph (b) of this clause and, pending payment thereof to the Issuer or Fletcher Building, as applicable, the Noteholder shall hold such amount on trust to pay the same to the Issuer 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 Issuer 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 8.5 shall be binding upon Senior Creditors of each of the Issuer and Fletcher Building whether or not they have

consented to such amendment.

- 3.7 **Liquidation of Issuer:** No Noteholder shall claim or prove in the Liquidation of the Issuer or Fletcher Building for any amount owing to such Noteholder under any Capital Note or this Deed to the extent that the Trustee 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 Trustee under or in respect of this Deed or the Capital Notes in or upon any Liquidation of the Issuer or Fletcher Building shall be applied, and pending such application shall be held by the Trustee 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 Trustee and of all remuneration and other moneys payable to the Trustee as provided in this Deed;
 - (b) **Secondly**, in payment to the Issuer 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 Issuer or Fletcher Building, as applicable, to the Senior Creditors of the Issuer or Fletcher Building, as applicable, according to their respective rights and interests and, pending payment thereof to the Issuer or Fletcher Building, as applicable, any such amount received by the Trustee shall be held by it on trust to pay the same to the Issuer or Fletcher Building, as applicable, to be held on the trusts aforesaid;
 - (c) **Thirdly**, subject to the indebtedness of the Issuer or Fletcher Building, as applicable, to the Senior Creditors of the Issuer or Fletcher Building, as applicable, having been paid or satisfied or provided for in full (for which purpose the Trustee may rely upon any written advice from the Liquidator of the Issuer or Fletcher Building, as applicable) and subject to the claims of creditors of the Issuer or Fletcher Building, as applicable, whose claims (including the claims of holders of 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 Issuer or Fletcher Building, as applicable, or to such other person as may be lawfully entitled thereto.
- 3.9 **Payments to Liquidator of Issuer or Fletcher Building:** At any time after the commencement of the Liquidation of the Issuer or Fletcher Building, as applicable, the Trustee and any Noteholder may satisfy its obligations under clause 3.5 and, in the case of the Trustee, under paragraphs (b) and (c) of clause 3.8, by paying any amounts referred to in such provisions to the Liquidator of the Issuer 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

1. Convening Meetings:

- (a) The Issuer or the Trustee at any time may, and the Issuer and the Trustee upon a request in writing by Noteholders holding together not less than 10 percent of the aggregate Principal Amount of the Capital Notes must, convene a meeting of the Noteholders. Whenever the Issuer or the Trustee convenes any such meeting it shall give notice to the other, to the Stock Exchange (if the Capital Notes are quoted thereon) and to the Noteholders.
- (b) Meetings will be held in Auckland, or such other place as the Trustee approves.
- (c) Any request by Noteholders holding together not less than 10 percent of the aggregate Principal Amount 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: Notice must be 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.

3. Notice of Meeting:

- (a) At least 14 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, nor specify the terms of the resolutions to be proposed, but must indicate the general nature of the business to be transacted at the meeting.
- (b) Notwithstanding that it is called by shorter notice than that specified in this clause, a meeting will be deemed to have been duly called if it is so agreed by Noteholders having a right to attend and vote at the meeting, and together holding not less than 75 percent of the aggregate Principal Amount of the Capital Notes concerned (unless otherwise required by law).
- (c) The accidental omission to give notice to, or the non-receipt of notice by, any person entitled to notice (including the Stock Exchange but not the Issuer or the Trustee) will not invalidate the proceedings of any meeting.

4. Chairman: A person (who may, but need not, be a Noteholder) nominated in writing by the Trustee 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: At any such meeting two or more Noteholders present in person or by proxy and holding or representing in the aggregate a clear majority in Principal Amount of the Capital Notes for the time being outstanding will form a quorum for the transaction of business, and no business (other than the choosing of a chairman) may be transacted at any meeting unless the requisite quorum is present at the commencement of business.

6. Lack of Quorum and Adjournment:

- (a) If, within 30 minutes after the time appointed for any such meeting, a quorum is not present the meeting will stand adjourned for such period, not being less than 14 days, as may be appointed by the chairman, unless the meeting has been convened upon the request of the Noteholders, in which case the meeting will not be adjourned but will lapse for want of a quorum. At least seven days notice (excluding the day in which

notice is given and including the day in which the adjourned meeting is held) specifying the day, time and place of the adjourned meeting must be given. At such adjourned meeting two or more persons present in person or by proxy holding Capital Notes (whatever the number of Capital Notes so held or represented) will form a quorum and have the power to pass any resolution and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had a quorum been present at such 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 Trustee, the Issuer 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.
- (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) The instrument appointing a proxy must be in writing signed by the appointor or his attorney or if the appointor is a corporation either under seal or signed on its behalf by an officer, attorney, director or other person who appears to have authority to appoint a party on behalf of such corporation.

- (b) A person appointed to act as a proxy need not be a Noteholder and a proxy of a Noteholder must have the right to speak at the meeting.
- (c) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a copy of such power or authority certified in such manner as the Trustee approves must be deposited at such place as (or a facsimile copy of such proxy and power of attorney must be received at such facsimile number as) the Trustee or the Issuer with the approval of the Trustee may in the notice convening the meeting direct or (if no such place is appointed) then at the registered office of the Issuer not later than the Proxy Closing Time.
- (d) An instrument of proxy may be in any usual common form or in such other form as the Trustee approves and may make provision for directions to be given by the grantor to vote in favour of or against any proposed resolution.
- (e) 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.
- (f) An instrument of proxy in favour of:
 - (i) the chairman of the Issuer; 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 Issuer 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 Trustee or by one or more Noteholders holding or representing not less than five percent of the aggregate Principal Amount 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 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 Trustee or the Issuer 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. **Extraordinary Resolutions:** A meeting of the Noteholders, in addition to the powers expressed in this Deed, but without prejudice to any powers conferred on the Trustee by this Deed, has the following powers exercisable by Extraordinary Resolution namely:
- (a) to sanction any proposal by the Issuer 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 Issuer;
 - (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 Extraordinary 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 Extraordinary Resolution;

- (f) to request the removal of any trustee of this Deed and to approve the appointment of a new trustee;
 - (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 Extraordinary Resolution; and
 - (h) to direct or request the Trustee to take such action or do such things as the Trustee may lawfully do under this Deed and to authorise the Trustee to deduct its costs and expenses from any amount received by the Trustee 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 and duly entered in records to be from time to time maintained for that purpose by the Trustee. 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. Copies of all minutes must be given by the Trustee to the Issuer as soon as possible after each meeting.
13. **Class Meetings:** If and whenever the Issuer 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 Trustee 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 Trustee 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 Trustee 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.