**Dated** 2016

**ESCROW DEED**

**BODY CORPORATE [           ]**

Body Corporate

and

**ESCROW UNIT OWNERS**

and

**BUDDLE FINDLAY**

Escrow Agent

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This**Escrow Deed** is made on 2016

**BETWEEN**

**BODY CORPORATE [                  ]** (the **"Body Corporate"**);

**The ESCROW UNIT OWNERS**; and

[**Law firm**] (the "**Escrow** **Agent"**).

**INTRODUCTION**

###### The Body Corporate is the body corporate under the Unit Titles Act 2010 of the building at [                                                                           ] (the "**Building**").

###### The Body Corporate has procured seismic assessments of the Building. The report identified a new build standard seismic rating percentage ("**NBS**") of <33% of NBS indicating that the Building is, or may be, earthquake prone (as that term is defined in the Building Act 2004).

###### The Unit Owners and the Body Corporate have agreed that it is in their respective interests for the structure of the Building to be strengthened and have resolved in accordance with the applicable provisions of the Unit Titles Act [1972 / 2010] to undertake those strengthening works to bring the Building to 67% of NBS or higher.

###### The Unit Owners and the Body Corporate have *[entered into the Seismic Strengthening Works Agreement and]* commissioned the Plan of Works in respect of the Works.

###### The Body Corporate has engaged or will engage the Consultants to assist with the Strengthening Project and is intending to enter into the Building Contract to complete the Works.

###### Before entering into the Building Contract the Body Corporate needs to be satisfied that each Unit Owner can pay their Project Levy Amount to and for that purpose has or intends to issue the Project Levy.

###### The Lender Unit Owners have approached the Lenders for a loan to fund payment of part of their Project Levy.

###### As a condition of approving the Project Loan for the Conditional Unit Owners the Lenders require the Project Loans for the Conditional Unit Owners to be held by an escrow agent until such funds are required by the Body Corporate to meet the Project Costs.

###### To facilitate satisfaction of this requirement of the Lenders, the Conditional Unit Owners and the Body Corporate agree to appoint the Escrow Agent, which appointment the Escrow Agent has accepted, on the terms and conditions set out in this Deed.

###### In the event that any Self-Funded Unit Owners or Approved Unit Owners advise the Body Corporate that they wish to satisfy their Project Levy by paying to the Escrow Account rather than to the Body Corporate Building Account they agree to enter into, and be bound by, the terms of this Deed.

**IT IS AGREED**

# Interpretation

## **Definitions**: Except to the extent the context requires otherwise, in this Deed:

**Approved Unit Owner** means a Lender Unit Owner who is not required as a condition of their Project Loan to be a party to this Deed;

**BC Account Unit Owner** means an Approved Unit Owner who satisfies their Project Levy by making Non-Escrow Unit Owner Payments;

**BC Account Self-Funded Unit Owner** means a Self-Funded Unit Owner who satisfies their Project Levy by making Non-Escrow Unit Owner Payments;

**Body Corporate Building Account** means the bank account established by the Body Corporate at a Registered Bank solely for the purpose of the receipt of the Non-Escrow Unit Owner Payments and payment of Payment Schedules and Project Expense Claims;

**Body Corporate Building Account Fund** means the aggregate sum of the Non-Escrow Unit Owner Payments made by the Non-Escrow Unit Owners;

**Body Corporate Chairperson** means [ ] or any such other person who may be appointed as a replacement from time to time;

**Building Consultant** means the building surveyor or quantity surveyor engaged by the Body Corporate and approved by the Lenders to provide the Building Consultant Documents for the benefit of the Lenders;

**Building Consultant Documents** means the Interim Building Contract Report, the Final Building Contract Report and the Payment Schedule Certificates;

**Building Contract** means the building contract to be entered into by the Body Corporate with the Contractor in respect of the Works;

**Building Professional** means the quantity surveyor or other suitable qualified engineer, project manager or architect engaged by the Body Corporate to manage the Building Contract;

**Charges** means, subject to clause 5.1(k), the charges set out in the Schedule of Charges which are payable in accordance with clause 12;

**Conditional Unit Owner** means a Lender Unit Owner who is required as a condition of their Project Loan to be a party to this Deed and who satisfies their Project Levy by making Escrow Unit Owner Payments on the terms and conditions contained in this Deed;

**Consent[s]** means the building consent [and resource consent (if required)] for the Works obtained from the Territorial Authority;

**Consultant** means all consultants, building professionals or experts engaged or contracted by the Body Corporate in relation to, or in connection with, the Strengthening Project;

**Contingency Sum** means the sum of money allowed for in the Project Budget for expenditure on aspects of the Works that were unforeseen or unforeseeable at the time the Project Budget was prepared;

**Contractor** means the builder under the Building Contract;

**Deed of Accession** means a deed of accession to this Deed substantially in the form set out in the First Schedule;

**Engineer** means the suitably qualified engineer engaged by the Body Corporate to prepare the Plan of Works;

**Engineer's Certificate** means the certificate addressed to the Escrow Agent substantially in the form set out in the Seventh Schedule;

**Escrow Account** means the account established by the Escrow Agent for the receipt of the sums comprising the Escrow Fund;

**Escrow Deed Certificate** means the certificate issued by the Body Corporate's solicitors [or the Body Corporate] to the Escrow Agent substantially in the form set out in the Fourth Schedule;

**Escrow Documents** means the Interim Building Contact Report, the Final Building Contract Report, the Escrow Deed Certificate, the Engineer's Certificate, any Project Expense Claim Certificate and any Payment Schedule Certificate;

**Escrow Fund** means the aggregate sum of the Escrow Unit Owner Payments made by the Escrow Unit Owners;

**Escrow Unit Owners** means the Conditional Unit Owners, the Voluntary Unit Owners and the Voluntary Self-Funded Unit Owners;

**Escrow Unit Owner Payment** means, in respect of:

### a Conditional Unit Owner, each payment including a Project Loan made to the Escrow Account by that Conditional Unit Owner to pay their Project Levy Amount;

### a Voluntary Unit Owner, each payment including a Project Loan made to the Escrow Account by that Voluntary Unit Owner to pay their Project Levy Amount; and

### a Voluntary Self-Funded Unit Owner, each payment made to the Escrow Account by that Voluntary Self-Funded Unit Owner to pay their Project Levy Amount;

**Final Building Contract Report** means the report addressed to the Escrow Agent substantially in the form set out in the Third Schedule;

**Final Completion Certificate** has the meaning set out in NZS3910:2013;

**Final Payment Schedule** has the meaning set out in NZS3910:2013;

**Interim Building Contract Report** means the report addressed to the Escrow Agent substantially in the form set out in the Second Schedule;

**Lenders** means those Lenders identified in the Project Levy Amount Schedule;

**Lender Unit Owner** means a Unit Owner who is obtaining a Project Loan from one of the Lenders;

**Non-Escrow Unit Owners** means the BC Account Self-Funded Unit Owners and the BC Account Unit Owners;

**Non-Escrow Unit Owner Payment** means, in respect of a:

### BC Account Unit Owner, each payment including a Project Loan made to the Body Corporate Building Account by that BC Account Unit Owner to pay their Project Levy Amount; and

### BC Account Self-Funded Unit Owner, each payment made to the Body Corporate Building Account by that BC Account Self-Funded Unit Owner to pay their Project Levy Amount;

**Payment Schedule** means a Progress or Final Payment Schedule issued by the Building Professional in response to a payment claim submitted by the Contractor under the Building Contract;

**Payment Schedule Certificate** means a certificate addressed to the Escrow Agent substantially in the form set out in the Sixth Schedule;

**Plan of Works** means the structural assessment and plans prepared by the Engineer to upgrade the building to 67% or greater of NBS;

**Principal Unit** means a unit identified as a principal unit on Unit Plan [                          ];

**Progress Payment Schedule** has the meaning set out in NZS3910:2013;

**Project Budget** means the final cost to complete budget for the Works approved by the Body Corporate;

**Project Costs** means the budgeted Payment Schedules, Project Expense Claims and Contingency Sum required to complete the Works and identified in the Project Budget;

**Project Expense Claim** means either:

### an invoice submitted by a Consultant to the Body Corporate for work in relation to, or in connection with, the Strengthening Project; or

### any other expense payable by the Body Corporate in relation to, or connection with, the Strengthening Project or the Project Levy;

**Project Expense Claim Certificate** means a certificate addressed to the Escrow Agent substantially in the form set out in the Fifth Schedule;

**Project Funds** means, at any time, the aggregate sum of (a) the Escrow Fund and (b) the Body Corporate Building Account Fund, in each case at that time;

**Project Levy** means the levy issued by the Body Corporate to each Unit Owner requiring payment of their Project Levy Amount;

**Project Levy Amount** means each Unit Owner's share of the Project Costs as determined in accordance with the Unit Titles Act 2010;

**Project Levy Amount Schedule** means a schedule prepared by the Body Corporate confirming each Unit Owner's Project Levy Amount, and identifying:

### the Escrow Unit Owners and if they are Conditional Unit Owners or Voluntary Unit Owners, the identity of their Lender and the amount of their Project Loan; and

### the Non-Escrow Unit Owners;

**Project Loan** means each loan advanced by a Lender to a Lender Unit Owner to be used to pay part or all of their Project Levy;

**Registered Bank** has the meaning given to that expression in the Reserve Bank of New Zealand Act 1989**;**

**Schedule of Charges** means the document provided by the Escrow Agent to the Body Corporate advising the relevant Charges for the Services;

**Seismic Strengthening Works Agreement** means the agreement dated [ ] between the Body Corporate and the Unit Owners relating to Works;

**Self-Funded Unit Owner** means a Unit Owner who is not obtaining a Project Loan from one of the Lenders;

**Services** means the services provided by the Escrow Agent in accordance with this deed being the preparation of this Deed, liaising with the Body Corporate in relation to the Project Levy Amount Schedule and confirmation of the Escrow Documents, receipt of the Escrow Unit Owner Payments to the Escrow Account, the payment of Project Expense Claims and Payment Schedules and providing the Body Corporate with a spreadsheet containing details of payments in and out of the Escrow Account;

**Strengthening Project** means the Works together with associated consulting services and other works and services related to the strengthening of the Building in accordance with the Plan of Works;

**Territorial Authority** means [ ];

**Trust Account** has the meaning set out in the Lawyers and Conveyancers Act 2006;

**Unit Owner** means the registered proprietor of a Principal Unit in the Building;

**Voluntary Unit Owner** means an Approved Unit Owner who satisfies their Project Levy by making Escrow Unit Owner Payments on the terms and conditions contained in this Deed;

**Voluntary Self-Funded Unit Owner** means a Self-Funded Unit Owner who satisfies their Project Levy by making Escrow Unit Owner Payments on the terms and conditions contained in this Deed.

**Works** means the works set out in the Plan of Works required to strengthen the Building to at least 67% of NBS.

## **General references**: In this Deed, unless the context otherwise requires:

## a reference to a clause or schedule is a reference to a clause of, or the schedule to, this Deed;

## a reference to this Deed or another instrument includes any variation or replacement of either of them;

## the singular includes the plural and vice versa;

## the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;

## a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and

## words importing one gender include the other genders.

## **Headings**: Ignore headings in construing this Deed.

# Appointment

The Escrow Unit Owners and the Body Corporate (together, the Escrow Parties) appoint the Escrow Agent, and the Escrow Agent accepts appointment, as escrow agent on behalf of the Escrow Unit Owners and the Body Corporate in accordance with, and subject to, the provisions of this Deed.

# ESCROW UNIT OWNER Effective Date

## As between each Escrow Unit Owner, the Body Corporate and the Escrow Agent, this Deed will come into effect on the date that an Escrow Unit Owner executes and delivers to the Escrow Agent a Deed of Accession in respect of this Deed.

# Escrow Fund

## **Holding of Escrow Fund**: The Escrow Agent will hold the Escrow Fund in their Trust Account for the respective rights and interests of the Escrow Unit Owners (and their Lenders in the case of Conditional Unit Owners and Voluntary Unit Owners) and the Body Corporate pursuant to this Deed and the Project Levy and will not withdraw, pay or permit to be withdrawn or paid to any person any part of the Escrow Fund except in accordance with the terms of this Deed or as may be required by law.

## **Payments limited**: Nothing in this Deed will impose on the Escrow Agent any obligation to pay any amount which exceeds the aggregate amount of the Escrow Fund from time to time.

# ACKNOWLEDGEMENTS

## The Escrow Parties acknowledge and agree as between themselves (as applicable):

### that the Escrow Account will be opened in the name of the Body Corporate;

### each Escrow Unit Owner agrees to provide such information as is required to complete the Project Levy Amount Schedule and consents to the disclosure of such information in order for the Project Levy Amount Schedule and Escrow Deed Certificate to be provided on the basis that such information is only used for the purposes contemplated by this Deed;

### each Escrow Unit Owner will satisfy their Project Levy by only making Escrow Unit Owner Payments and not by paying to the Body Corporate Building Account;

### subject to the operation of clause 9.2, the Escrow Unit Owner Payments made on the instructions of, or by an Escrow Unit Owner, are deemed to be paid in satisfaction of that Escrow Unit Owner's Project Levy;

### notwithstanding that the Body Corporate will be entitled to the net interest accrued on the Escrow Fund and reserves the right to utilise the net interest accrued to meet Project Costs as required, in the event such interest is not utilised to meet Project Costs, following the issue of the Final Completion Certificate, the Body Corporate will distribute or credit the sum equivalent to the interest (or the balance thereof) held to the Escrow Unit Owners in proportion with their Project Levy Amount paid to the Escrow Account or as otherwise agreed with the Escrow Unit Owners;

### each Conditional Unit Owner and Voluntary Unit Owner is solely responsible for payment of interest that accrues on that Conditional Unit Owner's or Voluntary Unit Owner's Project Loan;

### the Body Corporate shall procure the Building Consultant, at the cost of the Body Corporate, to provide the Building Consultant Documents;

### the Body Corporate will procure the Building Consultant to provide the Interim Building Contract Report, which is to be satisfactory to the Lenders, before the Project Loans can be advanced to the Escrow Account;

### the Body Corporate will procure the Engineer, at the cost of the Body Corporate, to provide the Engineer's Certificate, which is to be satisfactory to the Lenders, before the Project Loans can be advanced to the Escrow Account;

### the Body Corporate will procure the Building Consultant to provide the Final Building Contract Report, which is to be satisfactory to the Lenders, before the provision of the Escrow Deed Certificate;

### the Body Corporate is liable for the Escrow Agent's Charges under this Deed for the Services, provided that nothing in this Deed shall prevent the Body Corporate from allocating to, and recovering from, the Escrow Unit Owners, such fees and charges the Body Corporate may incur in relation to this Deed in accordance with section 126 of the Unit Titles Act 2010;

### the Body Corporate shall provide to the Escrow Agent the Project Levy Amount Schedule and the Escrow Deed Certificate (which will be subject to verification by the Escrow Agent) before any payments are permitted under clause 9.1;

### [the Body Corporate shall provide the Escrow Unit Owners with notice that the Escrow Deed Certificate has been verified by the Escrow Agent]; and

### in relation to its duties and obligations under this Deed except as provided at clause 9.2, only the Body Corporate is entitled to give instructions to the Escrow Agent and in relation to its rights and obligations under this Deed the Escrow Unit Owners have no right or capacity to give any such instructions or directions.

## The Body Corporate acknowledges and agrees, for the benefit of the Lenders and the Escrow Unit Owners, that:

### it shall advise the bank at which the Body Corporate Building Account is held that such funds are held by the Body Corporate solely for the purpose of the receipt of the Non-Escrow Unit Owner Payments and payment of Payment Schedules and Project Expense Claims and shall procure such bank to provide confirmation that the bank acknowledges it has no right of set-off or combination in respect of any funds held in the Body Corporate Building Account; and

### Payment Schedules or Project Expense Claims will be paid, in one transaction, at the direction of the Body Corporate from the Body Corporate Building Account. The relevant Payment Schedule or Project Expense Claim shall be satisfied by utilising the Escrow Fund and the Body Corporate Building Account Fund in the direct proportion that the percentage of each fund bears to the Project Funds. The Body Corporate shall instruct the Escrow Agent to transfer the required share of the Payment Schedule or Project Expense Claim from the money held in the Escrow Account to the Body Corporate Building Account; and

**Alternative**: Payment Schedules or Project Expense Claims will be paid, in one transaction, at the direction of the Body Corporate from the Body Corporate Building Account. The relevant Payment Schedule or Project Expense Claim shall be satisfied by utilising the Escrow Fund and other funds available to the Body Corporate to satisfy the Project Costs (including but not limited to the Body Corporate Building Account Fund) in the direct proportion that the percentage of each fund bears to the Project Funds. The Body Corporate shall instruct the Escrow Agent to transfer the required share of the Payment Schedule or Project Expense Claim from the money held in the Escrow Account to the Body Corporate Building Account; and

### it shall provide to the Escrow Agent the code compliance certificate issued by the Territorial Authority in relation to the Consent within five days of receipt of the code compliance certificate by the Body Corporate

## The Escrow Agent acknowledges and agrees:

### that each Lender is relying on the Escrow Agent fulfilling its duties and obligations under this Deed when each Lender makes a Project Loan(s) to the Lender Unit Owners funded by that Lender including without limitation, the Escrow Agent confirming to the Lenders that the Escrow Documents provided to the Escrow Agent in accordance with this Deed comply with the form of Escrow Documents contained in the schedules to this Deed; and

### to provide the Escrow Unit Owners with copies of its invoices issued to the Body Corporate for attendances in relation to fulfilling its duties and obligations under this Deed, provided that before the Escrow Agent is obligated to provide such information to an Escrow Unit Owner in accordance with this clause, such Escrow Unit Owner must first have requested copies of such invoices from the Body Corporate Chairperson before approaching the Escrow Agent.

# Representations and warranties

The Body Corporate represents and warrants, for the benefit of the Escrow Unit Owners, the Escrow Agent and the Lenders, that as at the date of this Deed:

### [it is in compliance with the terms and conditions of the Seismic Strengthening Works Agreement and will at all times, whilst the Project Loans have been provided by the Lenders, remain in compliance with the terms and conditions of the Seismic Strengthening Works Agreement];

### it has the power, and all necessary corporate action (including the passing of all resolutions), consents, acts and conditions have been done, fulfilled and performed in order to authorise it, to enter into, execute and deliver, and exercise its rights and perform its obligations under, this Deed;

### its obligations under this Deed are legal, valid and binding and enforceable against it; and

### its entry into, and the exercise of its rights and performance of its obligations under, this Deed do not and will not violate or contravene any applicable law or its rules nor cause any limit on its powers to be exceeded.

# Investment of Escrow Fund

## **Investment**

### The Escrow Agent will invest the Escrow Fund through its Trust Account in a New Zealand dollar denominated interest bearing deposit with any Registered Bank with whom the Escrow Agent operates a Trust Account;

### Subject to the Escrow Agent complying with this Deed, the Escrow Agent will not be liable to the Escrow Unit Owners or to the Body Corporate for any loss of or diminution in any investment of the Escrow Fund except in the case of wilful default or fraud on the part of the Escrow Agent;

### Subject to the operation of clauses 11 and 12, the net interest accrued on the Escrow Fund will form part of the Escrow Fund and shall be retained in the Escrow Account and will, on request from the Body Corporate, be paid by the Escrow Agent to the Body Corporate, firstly to pay the Charges under this Deed and secondly in payment of the Project Expense Claims and Payment Schedules, as determined by the Body Corporate in consultation with the Building Professional. Any balance of interest remaining as part of the Escrow Fund after the issue of the Final Completion Certificate will be paid to the Body Corporate in accordance with clause 5.1(e).

**Alternative**: Subject to the operation of clauses 11and 12, the net interest accrued on the Escrow Fund will form part of the Escrow Fund and shall be retained in the Escrow Account and will, on request from the Body Corporate, be paid by the Escrow Agent to the Body Corporate, otherwise it shall be held as part of the Escrow Fund and paid to the Body Corporate on the issue of the Final Completion Certificate in accordance with clause 5.1(e).

## **Notification of escrow**: The Escrow Agent shall, at the time the Escrow Fund is deposited in accordance with clause 7.1, advise such bank that the Escrow Fund is being held by the Escrow Agent for the Escrow Unit Owners and Body Corporate in accordance with this Deed and will provide a copy of such notice to the Body Corporate.

# Deductions from Escrow Fund

## **Deductions and withholdings**: Notwithstanding any other provision of this Deed, the Escrow Unit Owners and the Body Corporate acknowledge and agree that any part of the Escrow Fund required to be paid by the Escrow Agent pursuant to this Deed will be subject to any deductions or withholdings as may be required by law to be made by the Escrow Agent or by any person with whom the Escrow Fund is invested. The Escrow Agent will provide such evidence as it receives of any such deduction or withholding to the Body Corporate.

## **Escrow agent obligations**: If the Escrow Agent is bound or will be bound to pay income tax or any other taxes on any part of the Escrow Fund or income derived on the Escrow Fund, it shall be entitled to pay such taxes from the Escrow Fund or to withdraw from the Escrow Fund and pay to itself an amount sufficient to enable it to pay such taxes and to hold the balance of the Escrow Fund on the terms of this Deed.

# Payment by Escrow Agent

## **Payments from Escrow Account**: Amounts may be withdrawn from the Escrow Account after receipt by the Escrow Agent of the Escrow Deed Certificate (and verification of the Escrow Deed Certificate by the Escrow Agent which will be undertaken by the Escrow Agent satisfying itself that the Escrow Deed Certificate has been provided by an authorised signatory of the Body Corporate and the amounts in the Escrow Deed Certificate are the same amounts disclosed in the Project Levy Amount Schedule), notice of which will be provided to the Lenders by the Escrow Agent and then only:

### upon receipt of a Payment Schedule issued by the Building Professional under the Building Contract, certified by the Body Corporate, together with a Payment Schedule Certificate in respect of that Payment Schedule; or

### upon receipt of a Project Expense Claim Certificate issued by the Body Corporate; or

### in accordance with any of clauses 9.2, 9.3, 11 or 12.

The Escrow Agent is not obliged to make any payment on the instructions of the Body Corporate to the extent it is owed any amounts under clauses 11 or 12. Subject to the provisions of this Deed, the Escrow Agent will make payment to the Body Corporate Building Account, and will effect payment within one business day (or as soon as practicable thereafter) of receipt of satisfactory instructions from the Body Corporate.

## **Payments if no Escrow Deed Certificate**: If the Escrow Agent has not received the Escrow Deed Certificate as at the date which is six months after the receipt of the Interim Building Contract Report, the Escrow Agent shall pay the Escrow Unit Owner Payments comprising the Escrow Fund to the party who paid such sums in payment of the Project Levy to the Escrow Account. Any interest earned on the Escrow Fund will be the property of the Body Corporate and, subject to the terms of this Deed, will be paid to the Body Corporate.

## **Payment following completion of Works**: If a balance is still held by the Escrow Agent in the Escrow Account as at the date six months following the issue of the code compliance certificate issued by the Territorial Authority in relation to the Consent, and the Body Corporate has not requested payment of such balance to be made to it, the Escrow Agent shall be entitled, without providing prior notice, to pay the balance to the Body Corporate for the Body Corporate to distribute or use as agreed with the Escrow Unit Owners. The Escrow Agent shall incur no liability to the Escrow Parties or to any other person by reason only of choosing to exercise this right.

## **Authorised Signatories**: Written directions or notices provided to the Escrow Agent by the Building Professional or the Body Corporate must be signed by the Building Professional or the Body Corporate Chairperson (respectively) whose signature must be witnessed. Any change to the Body Corporate Chairperson or the Building Professional will be notified in writing to the Escrow Agent and such notice will be accompanied by the relevant minutes of the meeting of the Body Corporate confirming such change.

# Duties and Responsibilities of Escrow Agent

## **Limited Duties**: The Escrow Agent will have no duties, responsibilities or obligations except as expressly provided in this Deed and no implied covenants or obligations shall be inferred from this Deed against the Escrow Agent and, without limitation, the Escrow Agent:

### shall hold the Escrow Fund (including any accrued interest) in accordance with Deed and, in particular (without limitation) shall not release any of the Escrow Fund (including any accrued interest) except as provided in this Deed;

### shall not be under any duty to give the Escrow Fund (including any accrued interest) any greater degree of care than its own similar property;

### is not and must not be treated as a trustee or fiduciary acting for the benefit of the Escrow Parties;

### shall not be obliged to diversify the investment of Escrow Fund (including any accrued interest);

### will have no further duties or responsibilities under this Deed following payment of the Escrow Fund in accordance with the terms of this Deed; and

### for the avoidance of doubt, is not required to use or advance its own funds or otherwise incur financial liability on its part in performance of its duties or the exercise of its rights under this Deed.

## **Limitation of Liability**: The Escrow Agent acts as agent only and, except as expressly provided at clause 9.1 of this Deed, is not responsible or liable for the sufficiency of any funds deposited in the Escrow Fund. The Escrow Agent shall not have any liability or obligation whatever with respect to funds, amounts or payments not in fact received by the Escrow Agent, whether or not due and payable under any other agreement or any funds lost through the default or failure of the trading bank chosen to hold the Escrow Fund.

## **Protected Persons**: Neither the Escrow Agent nor any of its directors, officers, employees or agents (Protected Persons) will be liable for any act or omission in connection with this Deed or the Escrow Fund except in the case of wilful default, fraud or negligence. The Escrow Agent will not be obliged to:

### enquire as to compliance by the Unit Owners or the Body Corporate with, or ensure compliance by the Unit Owners or the Body Corporate with (and will have no liability in the event of non-compliance by the Unit Owners or the Body Corporate with), the provisions of the Building Contract, [the Seismic Strengthening Works Agreement] or this Deed; or

### enquire whether any written directions under clause 9.1(a) have been given in accordance with the relevant provisions of the Building Contract or to determine the correctness of any fact stated therein (including, without limitation, the calculation of any amount shown therein); or

### enquire whether any written directions under clause 9.1(b) have been given in accordance with a valid Project Expense Claim or to determine the correctness of any fact stated therein (including, without limitation, the calculation of any amount shown therein); or

### investigate the application of any funds paid by it to the Body Corporate hereunder.

## **Reliance by Escrow Agent**: The Escrow Agent will be entitled to rely for all purposes of this Deed upon any written notice, instruction or document believed by it on reasonable grounds to be genuine and which it believes on reasonable grounds to have been communicated or signed by or on behalf of the person by whom it purports to have been communicated or signed.

## **Not determined by appointment of liquidator**: The Escrow Agent's appointment will not be determined by the appointment of a liquidator, receiver or administrator to any of the Escrow Parties.

# Indemnity

The Body Corporate will on demand indemnify the Escrow Agent and each Protected Person against any liability, costs, expenses, proceeding or judgment incurred by any of them in acting as Escrow Agent and performing its obligations under this Deed where such liability, costs, expenses, proceeding or judgment arises from the Escrow Agent acting on the instructions of the Body Corporate or relying on any information provided by the Body Corporate to the Escrow Agent pursuant to this Deed or where there is a breach by the Body Corporate of any provision of this Deed, provided that neither the Escrow Agent nor any of the Protected Persons have acted with wilful default, fraud or negligence. If the Body Corporate fails to indemnify the Escrow Agent as required by this Deed within 14 days after receipt of written notice from the Escrow Agent, the Escrow Agent may indemnify itself out of the Escrow Fund.

# Fees of the Escrow Agent

The Body Corporate must pay the Charges to the Escrow Agent for the provision of the Services. In default of payment of any of the Charges within 14 days of written demand to the Body Corporate, the Escrow Agent may pay the same to itself out of the Escrow Fund.

# Dispute

## **Court Orders**: Any dispute arising out of or in relation to this Deed will only be settled by that party obtaining a sealed court order granting the orders sought (whether an injunction or otherwise), and until any such orders are served on the Escrow Agent in the manner set out under clause 25(c), the Escrow Agent will continue to carry out its obligations under this Deed including the payment obligations under clause 9.1 and the Escrow Agent will not be liable in any way whatsoever for continuing to carry out its obligations and /or make such payments under this Deed.

## **No proprietary interest**: No party will have any proprietary interest in any payments made under clause 9.1 except for the intended recipient.

## **Legal proceedings**: If the Escrow Agent is made a party to any legal proceedings (including mediation and/or arbitration), in relation to application of the Escrow Fund or the execution and administration of its powers and duties under this Deed, the Escrow Unit Owners jointly and severally agree to compensate the Escrow Agent on a time and attendance basis and to indemnify the Escrow Agent against all reasonable expenses (including legal costs) incurred by it in relation to any such application or proceedings in circumstances where clause 11 does not apply.

# Resignation

The Escrow Agent may resign and be discharged from its future obligations under this Deed at any time by giving not less than 28 days’ written notice of its resignation to the Body Corporate. That notice must specify the date on which the Escrow Agent’s resignation will take effect. If the Body Corporate receives such a notice, the Body Corporate must notify all Escrow Unit Owners, and following the provision of such notice, the Body Corporate and the Escrow Unit Owners must jointly appoint a successor escrow agent. If they have not appointed a successor within 28 days of receiving the notice from the Escrow Agent, the Escrow Agent may appoint its successor on such reasonable terms as it may agree with its successor those terms being no less advantageous to the Body Corporate and Escrow Unit Owners than contained in this Deed. The Escrow Agent will procure that the balance of the Escrow Fund (after deduction of any amounts which have become payable pursuant to clauses 8, 9, 11 and 12 of this Deed) is paid to the successor escrow agent appointed by the Escrow Unit Owners and the Body Corporate, or appointed by the Escrow Agent.

# Closure of Escrow Fund

The Escrow Agent may close the Escrow Account when the balance of the Escrow Fund has reduced to zero or in accordance with clause 9.3 of this Deed.

# No Delay

Each of the Escrow Unit Owners and the Body Corporate agree that they will not take any action which would have the effect, either directly or indirectly, of delaying, or otherwise preventing the operation of this Deed in accordance with its spirit and intent.

# Inconsistency with other agreements relating to project levy

As between the Escrow Unit Owners and the Body Corporate, in the event of any conflict or inconsistency between the provisions of this Deed and the provisions of any other agreement or resolution issued by the Body Corporate relating to the Project Levy, the provisions of this Deed will prevail to the extent of such conflict or inconsistency.

# Confidentiality and announcements

Each party agrees not to use or disclose information provided by any other party in connection with this Deed that is not publicly available and not to disclose the existence or contents of this Deed, except, in the case of disclosure:

### to:

#### any person in connection with an exercise of rights or dealing with rights or obligations under this Deed;

#### officers, employees, legal and other advisers and auditors of the parties on a “need to know basis”,

provided the disclosing party must procure that any such recipient acts consistently with this clause 18;

### with the consent of the other parties (as applicable), such consent not to be unreasonably withheld; or

### as required by any law.

# Further assurances

Each party must sign, execute and do all deeds, schedules, acts, documents and things as may reasonably be required by any other party effectively to carry out and give effect to the terms and intentions of this Deed.

# partial invalidity

The illegality, invalidity, or unenforceability at any time of any provision of this Deed under any law will not affect the legality, validity, or enforceability of the remaining provisions of this Deed and if any illegal, invalid or unenforceable provision would be legal, valid and enforceable if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

# Contracts Privity

The parties acknowledge and agree for the purposes of the Contracts (Privity) Act 1982 that this Deed contains provisions which confer a benefit on, and are intended to be enforceable by, the Lenders.

# Amendments

No amendment to this Deed is to be effective unless it is in writing and signed by all the parties.

# Successors

This Deed is to be binding on and take effect for the benefit of the parties and their respective successors.

# No Assignment

## The Body Corporate may not assign or transfer any of its rights or obligations under this Deed.

## An Escrow Unit Owner may not assign or transfer its rights and obligations under this Deed to any person unless that person has agreed to be bound by this Deed.

## Subject to clause 14, the Escrow Agent may not assign or transfer any of its rights or obligations under this Deed without the prior written consent of the Escrow Unit Owners and the Body Corporate.

# Notices

## **Form of notice**

Each notice or other communication under this Deed is to be in writing, is to be made by facsimile, email, personal delivery or by post to the addressee at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties. The initial facsimile number, address and relevant person or office holder of each party is set out under its name at the end of this Deed.

## **Notice effective**

No communication is to be effective until received. A communication is to, however, be deemed to be received by the addressee:

### **Facsimile**

in the case of a facsimile, on the business day on which it is sent or, if sent after 5pm (in the place of receipt) on the next business day or, if sent on a non-business day, on the next business day after the date of sending; and

### **Email**

in the case of email, on the business day on which it is sent or, if sent after 5pm (in the place of receipt) on the next business day or, if sent on a non-business day, on the next business day after the date of sending, unless in each case the sending party receives an error message relating to the sending of the email; and

### **Personal delivery**

in the case of personal delivery, when delivered.

# Counterparts

This Deed may be executed in any number of counterparts each of which is to be deemed an original, but all of which together are to constitute one instrument. A party may enter into this Deed by executing any counterpart. The parties acknowledge that this Deed may be executed by an exchange of facsimile copies or scanned copies and execution of this Deed by that means is valid and sufficient execution.

# delivery

As between the Escrow Agent and the Body Corporate (the "Delivery Parties"), without limiting any other mode of delivery, this Deed will be delivered by each of the Delivery Parties to this Deed on the earlier of:

### physical delivery of an original of this Deed, executed by that Delivery Party, into the custody of the other Delivery Party or its solicitors;

### facsimile or electronic transmission by that Delivery Party, its solicitors or any other person authorised in writing by that Delivery Party of a photocopied or scanned copy of an original of this Agreement, executed by that Delivery Party, to the other Delivery Party or its solicitors.

# trustee Unit Owners

If any Escrow Unit Owner is a trustee of a trust and has no beneficial interest in the assets of that trust ("Independent Trustee"), then the liability of such Independent Trustee under this Deed is limited to the value of the assets of that trust available from time to time to meet that Independent Trustee's liability to which shall be added the sum (if any) by which the value of that trust has been diminished by that Independent Trustee's breach of trust.

# Governing law and submission to jurisdiction

## **Governing law**

This Deed is to be governed by and construed by the laws of New Zealand.

## **Submission to jurisdiction**

Each of the parties irrevocably and unconditionally agrees that the New Zealand courts have jurisdiction to hear and determine each suit, action or proceeding (Proceedings), and to settle disputes, which may arise out of or in connection with this Deed and for those purposes irrevocably submits to the jurisdiction of the New Zealand courts.

**EXECUTION**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **EXECUTED** as a **DEED** for and on behalf | ) |  | | |  |  |
| of **BODY CORPORATE [ ]** in the presence of a Body Corporate Committee Member | )  )  ) |  | | |  |  |
|  |  | Body Corporate Chairperson | | |  |  |
| Witness signature |  | Print name | | |  |  |
| Full name |  |  | | | | |
| Address |  |  | | | | |
| Occupation |  |  | | | | |
| **EXECUTED** as a **DEED** for and on behalf | ) |  |  |  | | |
| of **BUDDLE FINDLAY** | ) |  |  |  | | |
|  |  | Director/Partner |  | Director/Partner | | |
|  |  | Print name |  | Print name | | |

# FIRST SCHEDULE - FORM OF DEED OF ACCESSION

**DATE**

**PARTIES**

By: [ ] ("**New Escrow Unit Owner**")

In favour of:  **BODY CORPORATE [                     ]** (the "**Body Corporate**") and **BUDDLE FINDLAY** (the "**Escrow Agent**")

**DEED**

1. **INTERPRETATION**
   1. In this Deed, Escrow Deed means the Escrow Deed dated [ ] relating to the building at [ ] between the Body Corporate, the Escrow Agent and the Escrow Unit Owners.
   2. To the extent to which they are applicable, the definitions and provisions contained in clause 1.1 of the Escrow Deed shall apply to and be incorporated in this Deed.
2. **ACCESSION AND ACKNOWLEDGEMENT**
   1. With effect from the date of this Deed the New Escrow Unit Owner is deemed to be an Escrow Unit Owner under the Escrow Deed.
   2. The New Escrow Unit Owner agrees to be bound by all the terms and conditions of the Escrow Deed as if it were a party to the Escrow Deed with the rights and obligations of an Escrow Unit Owner under the Escrow Deed and acknowledges receipt of a copy of the Escrow Deed.
   3. Pursuant to section 14 of the Property Law Act 2007 but without limiting the obligations imposed by clause 2.2 it is declared that there shall be deemed to be incorporated in this Deed all the covenants, powers, conditions and provisions of the Escrow Deed in the same manner and to the same extent as if the covenants, powers, conditions and provisions had been mutatis mutandis set out in full in this Deed and made applicable to the New Escrow Unit Owner, and the New Escrow Unit Owner accordingly covenants and agrees to duly perform and comply with and be bound by the covenants, powers, conditions and provisions.
   4. The New Escrow Unit Owner covenants with the Body Corporate and the Escrow Agent to duly perform and comply with the obligations imposed on it by this Deed.
   5. The New Escrow Unit Owner acknowledges and agrees that they have read the terms of the Escrow Deed, understand the nature, effect and practical implications of the Escrow Deed, enter into the Escrow Deed after having the opportunity to obtain legal and any other professional advice they require and that they shall not at any time or in any circumstance be entitled to cancel the contract recorded in and by this Deed.
   6. The New Escrow Unit Owner acknowledges and agrees for the purposes of the Contracts (Privity) Act 1982 that this Deed contains provisions which confer a benefit on, and are intended to be enforceable by the Body Corporate and the Escrow Agent.
   7. [ ] is/are an Independent Trustee[s] for the purposes of clause 28 of the Escrow Deed.
   8. This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
   9. Without limiting any other mode of delivery, this Deed will be delivered by the New Escrow Unit Owner immediately on the earlier of:
      1. physical delivery of an original of this Deed, executed by the New Escrow Unit Owner to the Escrow Agent; or
      2. transmission by the New Escrow Unit Owner (or any other person authorised by the New Escrow Unit Owner) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the New Escrow Unit Owner, to the Escrow Agent.
   10. This Deed will be governed by and construed in accordance with the laws of New Zealand.

Signed as a Deed

[**New Escrow Unit Owner**]

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED** as a **DEED** by [**FULL NAME IN CAPITALS**] in the presence of | )  ) |  |  |
|  |  |  | Signature |
| Witness signature |  |  |  |
| Full name |  |  |  |
| Address |  |  |  |
| Occupation |  |  |  |
|  |  |  |  |

**Note:** The signature must be witnessed by an independent person

|  |  |  |  |
| --- | --- | --- | --- |
| **[FULL NAME IN CAPITALS]** as trustee of the **[NAME OF TRUST]** | )  ) |  |  |
|  |  |  | Signature |
| Witness signature |  |  |  |
| Full name |  |  |  |
| Address |  |  |  |
| Occupation |  |  |  |

**Note:** The signature must be witnessed by an independent person

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **EXECUTED** as a **DEED** for and on behalf | ) |  |  |  |  |
| of **[COMPANY NAME] LIMITED** as trustee of the **[NAME OF TRUST]** by | )  ) |  |  |  |  |
|  |  |  | Director |  | Director |
| Witness signature |  |  |  | |  |
| Full name |  |  |  | |  |
| Address |  |  |  | |  |
| Occupation |  |  |  | |  |

**Note:** The signature must be witnessed by an independent person

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **EXECUTED** as a **DEED** for and on behalf | ) |  |  |  |  |
| of **[COMPANY NAME] LIMITED** by | ) |  |  |  |  |
|  |  |  | Director |  | Director |
| Witness signature |  |  |  | |  |
| Full name |  |  |  | |  |
| Address |  |  |  | |  |
| Occupation |  |  |  | |  |

**Note:** The signature must be witnessed by an independent person

# SECOND SCHEDULE - INTERIM BUILDING CONTRACT REPORT

**DATED** 20[15]

**TO:** **Buddle Findlay** (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**") I/we are the Building Consultant appointed pursuant to the Escrow Deed dated [                        ] between the Body Corporate [                          ], the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**") in respect of the Building, and this report is provided pursuant to the Escrow Deed.

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Building Consultant reporting to the Lenders in relation to the Works at the Building we report on the following matters:

1. the Building Contract is in a commercially acceptable format and contains satisfactory and robust quality assurance documentation;
2. the Works provided for in the Building Contract cover all works reasonably expected to be undertaken to complete the Works;
3. the Project Budget for the Works and including contingency sums are adequate and sufficient to complete the Works;
4. the Contractor has the ability and the capacity to complete the Works;
5. [the Building Contract requires proof of payment of subcontractors and enables the Body Corporate to pay subcontractors directly in the event of Contractor default in payment of subcontractors; *Drafting Note: if the Building Contract provides for this the QS is to comment on otherwise not required*]
6. all Consents and other statutory consents have issued for the Works and will remain current throughout the construction programme;
7. that the Building Contract is in compliance with the Construction Contracts Act 2002;
8. that the risks to be borne by each party under the Building Contract are in line with industry standards and there are no extraordinary construction risks in relation to the Works which have not been notified in writing to the Lenders;
9. that all necessary investigations relating to the scope of the strengthening work required to the Building and the design of the Works have been made, and these indicate that there will be no impediment to the timely and proper completion of the Works;

When preparing this report I/we have exercised all reasonable professional skill and care and have acted in good faith and acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Conditional Unit Owners and the Voluntary Unit Owners.

[sign off]

# THIRD SCHEDULE - FINAL BUILDING CONTRACT REPORT

**DATED** 20[15]

**TO:** **Buddle Findlay** (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**") I/we are the Building Consultant appointed pursuant to the Escrow Deed dated [                        ] between the Body Corporate [                          ], the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**") in respect of the Building, and this report is provided pursuant to the Escrow Deed.

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Building Consultant reporting to the Lenders in relation to the Works at the Building we report on the following matters:

1. that adequate contractors all risk insurance, public liability and project consultants professional indemnity insurance has been taken out by the builder, professional consultants all contractors and subcontractors in relation to the Works;
2. that the Body Corporate understands the requirements of the Construction Contracts Act 2002 and I/we are satisfied that the Body Corporate has the necessary systems in place to manage all necessary payment claim procedures in relation to the Works;
3. the final cash flow forecast for the Works is adequate and sufficient to complete the Works [and requires the instalments under the Project Loans to be made on [*specify dates for payment of subsequent instalments of the Project Levy if levied in instalments*] in the following amounts [*specify percentage amounts of instalments (40/40/20)*];
4. the estimated commencement date for the Works is [ ], the estimated duration of the Works is [ ] and the estimated date for the achievement of practical completion is [ ].

When preparing this report I/we have exercised all reasonable professional skill and care and have acted in good faith and acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Conditional Unit Owners and the Voluntary Unit Owners.

[sign off]

# FOURTH SCHEDULE - ESCROW DEED CERTIFICATE

**DATED** 20[15]

**TO:** **Buddle Findlay** (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**")

***[Where solicitors engaged by the Body Corporate]***

I/We are the solicitor(s) for Body Corporate [                          ], the Body Corporate in respect of the Building, and this certificate is provided pursuant to the Escrow Deed dated [                        ] between the Body Corporate, the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**").

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the solicitors acting for the Body Corporate in relation to the strengthening work being undertaken at the Building, we hereby certify:

***[Where no solicitors engaged by the Body Corporate]***

I am the current Body Corporate Chairperson of Body Corporate [                          ] as notified to the Escrow Agent pursuant to the Escrow Deed dated [                        ] between the Body Corporate [                          ], the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**") in respect of the Building, and this certificate is provided pursuant to the Escrow Deed.

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Body Corporate Chairperson of Body Corporate [                          ] I hereby certify that:

1. The Building Contract has been executed and that there have been no changes to the Building Contract since the provision of the Interim Building Contract Report to the Lenders;
2. The Contractor will be commencing work under the Building Contract on [ ], such date being no more than 6 months after the provision of the Interim Building Contract Report to the Escrow Agent;
3. Each Unit Owner has paid their Project Levy Amount to either the Escrow Account or the Body Corporate Account (as applicable) as set out in the attached Project Levy Amount Schedule in order to meet the Project Costs, **or,**

Although only the Unit Owners indicated in the attached Project Levy Amount Schedule have paid their Project Levy Amount, the Body Corporate is satisfied that the Project Levy Amounts that have been paid **[together with [any loan facilities the Body Corporate may have access to] / [*specify other settlement such as work "in kind"*,]**]are sufficient to meet the Project Costs.

**Attached** is a certified copy of the Engineer's Certificate that has been provided to the Escrow Agent before Project Loans were advanced to the Escrow Account.

I/We acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Conditional Unit Owners and the Voluntary Unit Owners.

[sign off]

# FIFTH SCHEDULE - project expense claim CERTIFICATE

**DATED** 20[15]

**TO:** **Buddle Findlay** ] (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**") I am the current Body Corporate Chairperson of Body Corporate [                          ] as notified to the Escrow Agent pursuant to the Escrow Deed dated [                        ] between the Body Corporate [                          ], the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**") in respect of the Building, and this certificate is provided pursuant to the Escrow Deed.

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Body Corporate Chairperson of Body Corporate [                          ] I hereby certify that in respect of the Project Expense Claim dated [ ] in the amount of $[*insert amount to be paid by the Escrow Agent*] being [Escrow Proportion of Funds]% of the total Project Expense Claim of $[Project Expense Claim Total]:

1. the services and any other expense described in the Project Expense Claim relates to the management and administration of the Works specified in the Plan of Works; and
2. all work to which the Project Expense Claim relates has been completed and I am satisfied the Project Expense Claim is in order for payment by the Escrow Agent.

[*Or if an expense is not covered by the Plan of Works]*

the expense described in the Project Expense Claim is an expense validly payable by the Body Corporate in relation to, or connection with, the Strengthening Project and I am satisfied the expense is in order for payment by the Escrow Agent.

I acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Conditional Unit Owners and the Voluntary Unit Owners.

[sign off]

# SIXTH SCHEDULE - Building Consultant CERTIFICATE

**PAYMENT SCHEDULE**

**DATED** 20[15]

**TO:** **Buddle Findlay** (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**") I/we are the Building Consultant appointed pursuant to the Escrow Deed dated [                        ] between the Body Corporate [                          ], the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**") in respect of the Building, and this certificate is provided pursuant to the Escrow Deed.

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Building Consultant certifying for the Lenders in relation to the work being undertaken to complete the Works at the Building we hereby certify that in respect of the Payment Schedule dated [                                       ] in the amount of $[*insert amount to be paid by the Escrow Agent*] being [Escrow Proportion of Funds]% of the total Payment Schedule Claim of $[Payment Schedule Total]:

1. we have received a written declaration from the Engineer that all work is being carried out in accordance with the plans and specifications for the Works specified in the Plan of Works and in a "workmanlike" manner; and
2. in our opinion all work to which the Payment Schedule relates has been completed.

I/We have exercised all reasonable professional skill and care and have acted in good faith and acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Conditional Unit Owners and the Voluntary Unit Owners.

[sign off]

# SEVENTH SCHEDULE - Engineer's CERTIFICATE

**DATED** 20[15]

**TO**: **Buddle Findlay** (the "**Escrow Agent**")

In respect of [           *building address*              ] (the "**Building**") I/We are the Engineer(s) for Body Corporate [                          ], the Body Corporate in respect of the Building, and this certificate is provided pursuant to the Escrow Deed dated [                        ] between the Body Corporate, the Escrow Unit Owners and the Escrow Agent (the "**Escrow Deed**").

Terms not otherwise defined herein shall have the meaning given to them in the Escrow Deed.

As the Engineer acting for the Body Corporate in relation to the work being undertaken to complete the Works at the Building, I/we hereby certify that, subject to the work required to undertake the Works being completed in a workmanlike manner:

1. I/we have prepared the Plan of Works and in our opinion, the Plan of Works will, strengthen the Building to 67% of NBS or higher; and
2. the Plan of Works satisfies the requirements of the Building Code (as that term is defined in the Building Act 2004).

I/We have exercised all reasonable professional skill and care and have acted in good faith and acknowledge that the Lenders are relying on this certificate for the purposes of the Escrow Deed and in agreeing to make the Project Loans to the Lender Unit Owners.

[sign off]