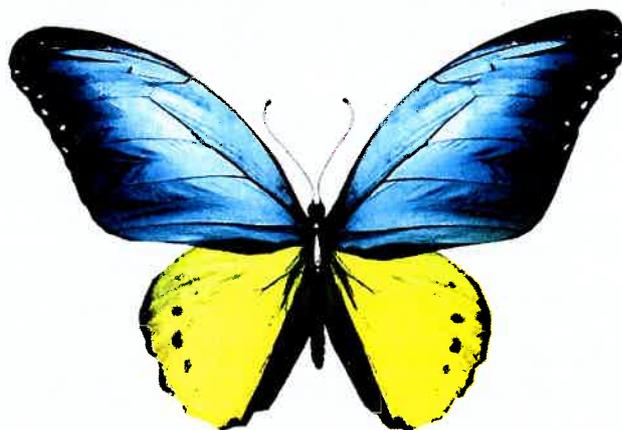


# CONTRACT OF SALE



SUMMERLIN  
BANYO

## SUMMERLIN MAGNOLIA APARTMENTS

**COOPER GRACE WARD**

Lawyers

Level 21, 400 George Street  
Brisbane Qld 4000

T 61 7 3231 2444

F 61 7 3221 4356

W [www.cgw.com.au](http://www.cgw.com.au)



## INFORMATION TABLE cont.

<b>Guarantors</b>	Name(s)	John Armstrong Egan ..... Bernadette Eileen Egan .....	
	Address	PO Box 1399, Carindale QLD 4152 ..... .....	
<b>Buyer's Solicitor</b>	Name(s)	CNG Law .....	
	Address	555 Old Cleveland Road ( PO Box 59) ..... Camp Hill QLD 4152 .....	
	Phone:	3009 5388	Facsimile: .....
	Email:	tchristie@cnglaw.com.au .....	
<b>Property</b>	Lot	127 .....	
	Colour scheme	<input checked="" type="checkbox"/> Light	see clause 11.2(a)(ii)
		<input type="checkbox"/> Dark	
<b>Base price</b>		\$ 456,000.00 \$.....	
<b>Optional Upgrades</b>		<b>Optional Upgrade selected</b>	<b>Additional cost (GST inc.)</b>
		<input type="checkbox"/> Timber floor to all living areas & bedrooms, excluding bathrooms/laundry	\$ 3,850
		<input checked="" type="checkbox"/> Timber floor to all living areas excluding bedrooms & bathrooms/laundry	\$ 2,310
		<input type="checkbox"/> Miele kitchen appliances	\$ 1,760
		<input type="checkbox"/> Mirror splashback in kitchen	\$ 1,485
		<input checked="" type="checkbox"/> Blockout roller blinds to bedroom windows and glass sliding door to balcony	\$ 2,310
		<input type="checkbox"/> Vertical panel glide blinds to bedroom windows and glass sliding door to balcony	\$ 1,650
		<input checked="" type="checkbox"/> Ceiling fan to living area	\$ 220
		<input type="checkbox"/> Pendant lights x 3 above kitchen bench	\$ 1,045

<input type="checkbox"/>	Hansgrohe tapware	\$ 440
<input checked="" type="checkbox"/>	Air-conditioning to 2 <sup>nd</sup> bedroom for 2 bedroom apartments	\$ 1,650
<input type="checkbox"/>	Air-conditioning to 2 <sup>nd</sup> and 3 <sup>rd</sup> bedrooms for 3 bedroom apartments	\$ 3,300
<b>Purchase Price (base price plus additional costs for Optional Upgrades)</b> $456,000.00 + \$6,490.00$ $= \$462,490.00$ (including GST)		
<b>Deposit</b>	Initial deposit	\$..... payable on signing of this Contract by the Buyer
	Balance deposit	\$ 10,000.00 payable within 14 days from the Contract Date
	Deposit	\$ 10,000.00 (up to 20% of Purchase Price)

## BACKGROUND

- A. The Seller is the registered owner of the Land.
- B. Subject to this Contract and the Disclosure Statement, the Seller intends to establish a community titles scheme over the Land which will include the Lot, being a subsidiary community titles scheme to the Principal Scheme.
- C. The Seller desires to sell and the Buyer desires to buy freehold title to the Lot for the Purchase Price and on the terms contained in this Contract.
- D. The Guarantors guarantee to the Seller the Buyer's obligations under this Contract.

## AGREEMENTS

### 1. INTERPRETATION

#### 1.1 Definitions

In this document:

**Approvals** means as defined in clause 6.1(a).

**ASIC** means the Australian Securities and Investments Commission.

**ATO Clearance Certificate** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer.

**Authority** includes any government or semi-governmental agency or body having jurisdiction whether federal, state or local, including a court of competent jurisdiction.

**Balance Lots** means lots 3 and 4 on SP287322 and any future subdivision of these lots.

**Balance Purchase Price** means:

- (a) the Purchase Price;
- (b) less any Deposit paid [for the avoidance of doubt this does not include the amount of any bank guarantee securing the Deposit];
- (c) adjusted under clause 14; and
- (d) plus any other amounts to be paid by the Buyer to the Seller under this Contract.

**BCCM Act** means the *Body Corporate and Community Management Act 1997 (Qld)* and the Regulation Module applying to the Scheme.

**Body Corporate** means the body corporate for the Scheme which is a subsidiary scheme of the Principal Body Corporate.

**Body Corporate Levies** means all contributions levied on the owner of the Lot by the Body Corporate under the BCCM Act including without limitation administrative, sinking, insurance and special levies.

**Body Corporate Notice** means any notice required under the BCCM Act to be given to the Body Corporate upon the transfer of the Lot.

**Buildings** means the buildings and improvements to be constructed on the Land.

**Building Format Plan** means the building format survey plan that reconfigures the Land into lots (one of which is the Lot) and common property substantially as shown on the Draft Building Format Plan.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane.

**CGT Withholding Amount** means the amount determined under s14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to Settlement, a lesser amount specified in a variation notice under s14-235.

**Chattels** means any chattels described in the Schedule of Finishes.

**CMS** means the community management statement for the Scheme to be registered in accordance with the BCCM Act.

**CMSs** means the community management statement for the Scheme and the community management statement for the Principal Scheme registered or to be registered in accordance with the BCCM Act.

**Colour Scheme** means the colour scheme nominated in the Information Table or determined pursuant to clause 11.2(a) (light and dark being the two different colour schemes offered by the Seller).

**Committee** means the committee of the Body Corporate.

**Common Property** has the meaning given to it in the BCCM Act and refers to the common property of the Scheme or the Principal Scheme (as applicable).

**Contract** means this contract and all annexures, special conditions and written amendments thereto.

**Contribution Entitlement** in respect of the Lot is the number allocated to the Lot in the Contribution Schedule.

**Contribution Schedule** is schedule A of the CMS containing the contribution entitlement for lots in the Scheme.

**Corporations Act** means *Corporations Act 2001 (Cth)*.

**Deposit** means the Deposit listed in the Information Table.

**Deposit Holder** means Cooper Grace Ward Lawyers [Trust Account].

**Development** means the development known as "Summerlin" consisting:

- (a) the construction of:
  - (i) buildings containing residential apartments with ancillary facilities over the Land; and

- (ii) buildings and other improvements including facilities for mixed residential, commercial, retail and other uses as the Seller in its absolute discretion determines over the Balance Lots; and
- (b) also includes where the context so permits, development on land adjacent to or nearby the Land for mixed residential, commercial, retail or other uses as the Seller in its absolute discretion determines.

**Disclosure Statement** means the disclosure statement relating to this Contract pursuant to the BCCM Act.

**Disturbances** means public announcements, noise, vibration, exhaust fumes, odours, electro-magnetic interference and works carried out to, on, next to or in connection with the Railway or any development above any adjoining part of the Railway or arising from the operation, alteration, expansion of the Railway in the course of operations and the movement, noise and other activities of passengers using, approaching or leaving the Railway and any other effects from the Railway whatsoever.

**Draft Building Format Plan** means the plan contained in the Disclosure Statement.

**Essential Terms** includes, in the case of a breach by:

- (a) the Buyer: clauses 4.1, 5.2(j), 5.3, 13.1, 13.6, 16.1 and/or 32.11; and
- (b) the Seller: clauses 13.1, 13.7 and/or 13.9.

**FATA** means the *Foreign Acquisitions and Takeovers Act 1975 (Cth)*.

**Financially Viable** means that the financial return to the Seller from the Development is sufficient to justify the Seller proceeding with the Development. For example, without limitation, the Development may not be Financially Viable because:

- (a) insufficient sales of lots in the Development have been achieved;
- (b) the cost of the Development, including construction costs, are greater than the costs estimated (or provided for) by the Seller; and/or
- (c) the amount or terms of finance the Seller can secure are not sufficient or satisfactory.

**FIRB** means the Foreign Investment Review Board administering FATA.

**FIRB Approval** means approval of the FIRB under the FATA to the acquisition to be made by the Buyer under this Contract.

**FIRB Approval Date** means that day 45 days after the Contract Date.

**Foreign Person** has the meaning given to that term in FATA.

**GST** has the same meaning as in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**Guarantee** means the guarantee contained in clause 20.

**Guarantor** means each person specified in clause 20 and the persons named in the Information Table.

**Information Table** means the section of this Contract titled Information Table on pages 1, 2 and 3.

**Interest Rate** means the standard default contract rate published by the Queensland Law Society from time to time.

**Land** means Lot 2 on SP287322 (Title Reference 51118904).

**Land Titles Act** means the *Land Titles Act 1994 (Qld)*.

**Letting Agent** means any person who is appointed as letting agent for the Scheme.

**Lot** means the proposed Lot to be created on registration of the Building Format Plan that corresponds with the proposed Lot described in the Information Table.

**Object** includes object, claim compensation or damages, refuse or delay settlement, withhold any part of the Purchase Price or seek to terminate this Contract.

**Optional Upgrades** means upgrade selections for the Lot shown as selected in the Information Table (if any).

**Outgoings** includes:

- (a) all rates, levies and other charges (including water and sewerage connection and usage charges) of any kind imposed by any Authority on the Land or Lot (as applicable);
- (b) all Body Corporate Levies in respect of the Lot;
- (c) insurance premiums paid by the Seller under section 191 of the BCCM Act in respect of the Scheme; and
- (d) land tax imposed by any Authority on the Land or Lot.

**PPSR** means the Person Property Security Register established under the *Personal Property Securities Act 2009 (Cth)*.

**Principal Body Corporate** means the body corporate for the Principal Scheme.

**Principal Scheme** means the registered Summerlin community titles scheme 50702.

**Principal Scheme Land** means the lots, schemes and Common Property in the Principal Scheme from time to time.

**Privacy Statement** means the statement available at <http://www.denniscorp.com.au/privacy-policy>.

**Property** means the Lot and the Chattels.

**Proposed CMS** means the proposed community management statement contained in the Disclosure Statement that is intended to be registered as to the Scheme (first CMS) subject to any variations anticipated or permitted in this Contract, Disclosure Statement or at law.

**PS140** means ASIC Policy Statement 140 issued 5 May 1999 in regard to service strata schemes and ASIC class order 02/305 in relation to management right schemes.

**Purchase Price** means the purchase price listed in the Information Table.

**Railway** means the operational railway adjacent to the Land with facilities necessary for operating a railway, as amended or expanded from time to time, including the expansion of services or increased frequency of services offered.

**Regulation Module** means the regulation module that applies to the Principal Scheme and Scheme as specified in the CMSs.

**Schedule of Finishes** means the schedule contained in the Disclosure Statement as applicable to the Lot and includes the floor plan (relevant to the Lot), the Colour Scheme shown in the Information Table or in accordance with clause 11.2(a)(ii) and Optional Upgrades (if any and where applicable substitutes an equivalent item contained in the schedule).

**Scheme** means the community titles scheme called "Summerlin Magnolia Apartments" to be created over the Land upon registration of the Building Format Plan and the CMS.

**Scheme Land** means the lots in the Scheme and Common Property in the Scheme from time to time.

**Settlement** means when the Seller gives the Buyer the items required by clause 13.7 in exchange for the items the Buyer must give the Seller under clause 13.6.

**Settlement Date** is 14 days after the Seller gives the Buyer notice that:

- (a) the certificate of classification for the Buildings or part of the Buildings that includes the Lot has issued;
- (b) the Building Format Plan has registered; and

(c) the Scheme has been established or changed,  
as varied under any other clause or special condition of this Contract.

**Significant Defect** means:

- (a) a major structural fault or defect in the Buildings or a defect, fault or omission in the Lot which poses a significant threat of injury to people in the Lot or makes the Lot uninhabitable; or
- (b) any exclusive use areas allocated to the Lot unable to be used for their intended purpose,

and notified in a notice from the Buyer to the Seller within 3 Business Days after the Buyer conducts its pre-settlement inspection in accordance with clause 12.6.

**Sunset Date** means three years and six months (3.5 years) from the Contract Date subject to extensions under clause 7 but shall in no circumstances be later than five years and six months (5.5 years) from the Contract Date.

**Transfer Documents** means the form of transfer required to transfer title in the Lot to the Buyer under the Land Titles Act and any other documents the Seller must execute that are required to have the transfer stamped or registered.

**Withholding Law** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

## 1.2 Construction

In this Contract:

- (a) terms in **bold** in the Information Table have the meanings shown opposite them;
- (b) words in the singular include the plural and vice versa;
- (c) words indicating any gender indicate the appropriate gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (f) references to any document (including this document) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (g) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (h) monetary references are references to Australian currency; and
- (i) headings are included for convenience only and do not affect interpretation of this document.

## 2. AGREEMENT TO SELL AND BUY

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- 2.1 The Seller sells to the Buyer and the Buyer buys from the Seller the Property, free from all encumbrances except as provided for, anticipated or permitted in this Contract and/or Disclosure Statement, on the terms and conditions set out in the Contract.
- 2.2 This Contract is conditional on the Lot being created and Scheme established. Without limiting the Seller's rights under this Contract, the Seller will use reasonable endeavours to cause registration of the Building Format Plan and CMS in accordance with the terms of this Contract.

## 3. WHOLE AGREEMENT AND BUYER'S WARRANTIES

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- 3.1 This Contract is the whole agreement between the Seller and the Buyer about the sale of the Property, unless another agreement is referred to in this Contract, and supersedes all prior representations, agreements, statements and understandings between the parties.

3.2 The Buyer expressly acknowledges, agrees and warrants that:

- (a) it has not relied on any representations made by the Seller or its agents, or any other person or corporation in entering into this Contract, other than as set out in this Contract, and that the conditions and stipulations of this Contract constitute the only agreement between the Seller and Buyer;
- (b) the Buyer has satisfied itself from its own independent enquiries as to the value, adequacy and suitability of the Property, and to the maximum extent permitted by law, all representations or provisions implied by law, relating to fitness, suitability or adequacy of the Property do not apply to this Contract or the Property;
- (c) the Buyer has relied on its own judgment in purchasing the Property on the terms of this Contract;
- (d) the Buyer has not relied on any artists impression, display model, display unit, plan, sketch, specification, sales aid or material of any description advertising the Property or the Development (other than as contained in this Contract) in entering this Contract;
- (e) the display model is for illustrative purposes only and changes to the appearance of the apartments will occur as the development progresses. External space and landscaping are indicative only. The external treatment of the Building is subject to variation as set out in this Contract including resulting from Approvals and design elements will be amended (including, without limitation, colour, materials, textures, stepping and projecting elements) from those proposed in the display model. The Buyer acknowledges intended changes to the building façade include (but are not limited to) mirroring of apartments, inclusion of glass balustrades to level 1, rotation of fire hydrant by 90 degrees, face brick to be rendered finish, no batten screen in front of transformer and no express joint cladding (to be rendered finish);
- (f) any display or sample lot erected or constructed by the Seller is intended to be indicative only of the quality and product that the Seller is intending to achieve (subject to the provisions of this Contract) and it is not intended that the design, layout or standard of specification shall in any way replicate any such display;
- (g) any information given in finance calculations, advertising, brochures and models for the Development are generic and indicative only and have not been relied upon by the Buyer in entering into this Contract;
- (h) the Buyer's acquisition of the Property is for Personal or Non Personal Use as elected by the Buyer in the Information Table and that the election noted in the Information Table is correct as at the Contract Date. If there is no election in the Information Table, the Buyer agrees it is acquiring the Property for Non Personal Use;
- (i) the Buyer has read this Contract and the Disclosure Statement (or has been given an opportunity to do so) and has taken (or was given the opportunity to take) legal advice and any other advice the Buyer considered appropriate prior to executing this Contract;
- (j) the Buyer was given an effective opportunity to negotiate the terms of this Contract before entering into this Contract and has either negotiated those terms, or elected not to negotiate the terms; and
- (k) the Buyer agrees the terms of this Contract are reasonable and balanced as between the rights and obligations of the Buyer and the Seller.

#### **4. DEPOSIT**

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- 4.1 The Buyer must pay the Deposit to the Deposit Holder at the time(s) specified in the Information Table.
- 4.2 The Deposit Holder will hold the Deposit in trust until either party becomes entitled to the Deposit under this Contract or at law.
- 4.3 If the Buyer fails to pay the Deposit or any part thereof when due, or pays the Deposit by cheque which is post-dated, stale or dishonoured, then the Seller may:
  - (a) terminate this Contract and sue the Buyer for the unpaid Deposit as a liquidated debt; or

- (b) keep the Contract on foot and sue the Buyer for the unpaid amount of the Deposit in which case the Deposit must be paid to the Deposit Holder.
- 4.4 The Deposit Holder is authorised and directed to invest the Deposit in an interest bearing trust account in the name of the Seller and with a trading bank selected by the Deposit Holder.
- 4.5 The Deposit is invested for the benefit of the Seller (and at the Seller's risk) with the Seller being entitled to all interest and liable for all tax imposed thereon.
- 4.6 The Deposit shall be paid:
- (a) to the Seller: if this Contract is terminated because the Buyer breached this Contract;
- (b) to the Buyer: if this Contract is terminated without default by the Buyer. The parties agree that after a refund of the Deposit in this circumstance, neither party has any further claim against the other; and
- (c) to the Seller: in the event this Contract settles.
- 4.7 The Seller shall on pay to the Buyer a sum equal to one hundred percent (100%) of the interest that accrues on the investment of the Deposit if this Contract is terminated without default by the Buyer (in which circumstance the Deposit Holder is directed to make that payment to the Buyer directly).
- 4.8 The Deposit Holder is not liable to either party for any delay in investing the Deposit, any actions in calling in the deposit in preparation for settlement including without limitation if Settlement is delayed, and any matters relating to interest rates.

## **5. PAYMENT OF DEPOSIT BY BANK GUARANTEE**

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- 5.1 The Seller may, in its absolute discretion, accept an unconditional bank guarantee in place of a cash deposit.
- 5.2 The bank guarantee must:
- (a) be issued by a financial institution the Seller approves in its absolute discretion;
- (b) be expressed to be unconditional / irrevocable;
- (c) be in favour of the Deposit Holder (as "Favouree" as opposed to specifying the Seller as Favouree);
- (d) contain the names of the Seller and Buyer (and no other third party) and make reference to this Contract and the sale made under it, for example: "Ivedon Street Pty Ltd sale of Lot [insert lot number] "Summerlin Magnolia Apartments" to [insert buyer name]";
- (e) be on terms satisfactory to the Seller in its absolute discretion;
- (f) be without an expiry date, or if it has an expiry date, be an expiry date not earlier than five years and eight months from the Contract Date;
- (g) be for an amount equal to the Deposit;
- (h) be payable to the Deposit Holder on demand by the Deposit Holder or Seller without reference to the Buyer;
- (i) specify the consideration for the issue of the bank guarantee as the Seller dispensing with the requirement for a cash deposit; and
- (j) be delivered at the time(s) required for payment of the Deposit.
- 5.3 If despite clause 5.2(f), the bank guarantee is limited as to time, the Buyer must provide to the Seller a replacement bank guarantee that complies with clause 5.2, or provide the Deposit Holder with cash or cleared funds equal to the amount referred to in the bank guarantee, at least 60 days before any bank guarantee given under this Contract expires.
- 5.4 Without limiting any of the Seller's other rights under this Contract, if the Buyer does not comply with clause 5.3, defaults under the Contract or does not pay the full Purchase Price (including Deposit) at

Settlement, the Seller or Deposit Holder (as the case may be) can make demand for the amount secured by the bank guarantee or terminate this Contract (or do both) without reference to the Buyer.

- 5.5 If the bank guarantee is called upon then the Deposit Holder is directed to treat the amount paid under the bank guarantee as the Deposit.
- 5.6 This clause 5 does not permit payment of the Deposit by way of deposit bond or insurance bond.

## **6. SELLER'S CONDITIONS**

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- 6.1 The Seller may terminate this Contract by written notice to the Buyer if:
- (a) the Seller is unable to obtain any consent, approval (including development approval which takes effect), permit, licence or any other authorisation necessary for the Seller to implement and construct the Development or any part thereof (**Approvals**);
  - (b) any Authority imposes or intimates that it will or is likely to impose conditions on any Approval, which the Seller is unwilling or unable to comply with;
  - (c) the Seller decides that the Development is not Financially Viable [termination under this clause (c) cannot occur after the Seller has substantially commenced commencement of construction of the Buildings];
  - (d) if, acting in good faith, the Seller reasonably believes that the continued existence of this Contract or other contracts may jeopardise the Seller's ability to undertake or continue the carrying out of the Development or any part thereof (for example a proposed financier will not consider this Contract to be a qualifying pre-sale contract for funding purposes) [termination under his clause (d) cannot occur after the Seller has substantially commenced construction of the Buildings];
  - (e) the Buildings or the Lot are destroyed or substantially damaged before Settlement or the Land, Scheme Land, and/or Lot are materially affected by any Authority in any manner such that the Development cannot in the Seller's reasonable opinion proceed (in which regard the Seller's decision will be final and binding); or
  - (f) any necessary permit required for registration of plan is not granted.
- 6.2 If the Contract is terminated under this clause 6 all money paid by the Buyer will be refunded (and any bank guarantee held under clause 5 returned) and no party will have any claim against the other.

## **7. SUNSET DATE**

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- 7.1 Subject to clause 7.2, if, other than because of the Buyer's default, the Seller has not settled this Contract before the Sunset Date, then the Buyer may terminate the Contract by signed written notice of termination given to the Seller before this Contract is settled.
- 7.2 The Buyer cannot terminate this Contract under clause 7.1 if the Seller gives the Buyer a notice from its architect, project manager, town planner or surveyor (as appropriate) certifying the period of all Delay Events (with such notice being final and binding on the parties). If the Seller gives such notice, then the Sunset Date is extended by the total period of the delays. The Seller may give a notice under this clause 7.2 on more than one occasion.
- 7.3 For the purpose of clause 7.2, Delay Event means anything beyond the Seller's reasonable control that delays registration of the Building Format Plan and/or change of the Scheme, including without limitation:
- (a) weather conditions that delay construction according to normal construction industry practice;
  - (b) delays caused by war, terrorist act, explosion, fire, civil strife, flood, storm or other act of God;
  - (c) physical conditions with respect to the Land or surrounding land which differ materially from the physical conditions which were reasonably anticipated by the Seller at the Contract Date;
  - (d) delays by Authorities and delays pertaining to Approvals;
  - (e) difficulties obtaining contractors, materials and/or chattels;

- (f) disputes with neighbours; and
- (g) industrial disputes.

## **8. TITLE TO THE LOT AND SELLER'S WARRANTIES**

---

8.1 The title to the Lot will be subject to:

- (a) all laws and regulations, including without limitation the BCCM Act, the Land Titles Act and the *Planning Act 2016 (Qld)*;
- (b) the CMSs;
- (c) all easements (including those for support, shelter and services), covenants and any other encumbrances (other than those to be released on Settlement pursuant to clause 13.7) affecting the Lot under the BCCM Act, the Land Titles Act (including without limitation any encumbrances registered on the Land as at the Contract Date), any other legislation including any such encumbrances that the Seller is required to give to an Authority pursuant to any Approvals (including without limitation services and utilities easements and access or thoroughfare easements to adjoining owners or any Authority);
- (d) the conditions of any Approvals to the extent such conditions subsist following registration of the Building Format Plan, establishment of the Scheme and change of the Principal Scheme to incorporate the Scheme;
- (e) all notifications, easements and restrictions (other than any mortgage) on the title for the Principal Scheme Land, Scheme Land and the title for the Lot; and
- (f) any transfer, dedication, lease, easement, exclusive use, occupational authority or other right over Common Property to any Authority or any entity providing any service or utilities or any adjoining owner of land.

8.2 The Buyer cannot:

- (a) Object as a result of any of those things listed in clause 8.1; and/or
- (b) give any requisitions on, enquiries on, or make objections to, title.

8.3 If there is a mistake or error in the description of the Property, the Common Property, the Development, the Principal Scheme Land or the Scheme Land, the Buyer's remedy (if any) is limited to a claim for compensation, which must be made prior to settlement, and the Buyer cannot otherwise Object (including by delaying settlement).

## **9. STATUTORY MATTERS**

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9.1 The Seller gives notice:

- (a) in accordance with the *Electricity Act 1994 (Qld)*, an approved safety switch for the general purpose socket outlet will be installed in the Lot before Settlement;
- (b) in accordance with the *Fire and Rescue Service Act 1990 (Qld)*, compliant smoke alarm(s) will be installed in the Lot before Settlement;
- (c) in accordance with section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* that the Land is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree;
- (d) in the event the sale is not an excluded transaction under s14-215 of the Withholding Law, the Seller will provide to the Buyer on or before Settlement for each person comprising the Seller either:
  - (i) an ATO Clearance Certificate; or
  - (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to NIL; and

- (e) there is proposed to be a shared pool associated with the Principal Scheme Land for which a pool safety certificate will be obtained prior to the relevant shared pool becoming operational (which will be after settlement).

## **10. EXCLUSIVE USE**

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- 10.1 Subject to this clause 10, the Seller must ensure the Body Corporate grants exclusive use for the benefit of the Lot the indicative areas shown in Schedule E of the Proposed CMS for the applicable purpose (car parking, storage and/or private yard).
- 10.2 The Buyer acknowledges and accepts that it may be a condition of Approvals for the Development that persons or entities who:
  - (a) do not own or occupy a lot in the Scheme; or
  - (b) are not genuine visitors of such persons,may be prohibited from using the car parks in the Development and this may prohibit the Buyer from leasing, licensing or selling the car park(s) [other than to another owner of a lot in the Scheme by way of a re-allocation of an exclusive use area].
- 10.3 The:
  - (a) exclusive use allocations in the Proposed CMS may not be fully completed; and
  - (b) plans contained in the Proposed CMS outline the proposed areas to be referred to in the CMS upon registration.
- 10.4 The Buyer acknowledges and agrees that:
  - (a) the Seller will complete the allocations at its discretion prior to registration of the CMS or pursuant to the by-laws contained in the CMS and can make reasonable amendments to the plans (including altering position, designation, size, numbering and locations);
  - (b) some parts of the Common Property or body corporate assets proposed to be the subject of exclusive use by-laws under the CMS may not have been identified yet (such as due to proposed construction activities) and those parts may be identified and included in the allocations and plans as the Seller decides;
  - (c) the use of exclusive use areas is to be regulated by the CMS and rules the Body Corporate may establish pursuant to the CMS (this may include without limitation rules are to use and maintenance);
  - (d) car park spaces will vary in size throughout the Development;
  - (e) service contractors of the Body Corporate (particularly the caretaker and letting agent) may be granted exclusive use, special privileges, occupational authorities or other rights as to Common Property areas, and these shall be identified and allocated in the Seller's discretion; and
  - (f) it shall not Object to the matters referred to in this clause 10.

## **11. DEVELOPMENT, BUILDINGS AND FINISHES**

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- 11.1 Subject to the other provisions of this Contract, by Settlement the Seller must ensure:
  - (a) the Buildings and Lot are constructed in a proper and workmanlike manner by a licensed builder; and
  - (b) the Lot is equipped with the finishes, fittings and Chattels specified in the Schedule of Finishes, (including Optional Upgrades (if any)) substantially in accordance with the Disclosure Statement and this Contract.
- 11.2 Subject to the provisions of this Contract:
  - (a) the Lot will be:

- (i) constructed with a floor plan substantially in accordance with the floor plan contained in the Schedule of Finishes; and
  - (ii) be finished with the Colour Scheme, provided that if the Information Table is not completed to show the Colour Scheme, the Colour Scheme shall be chosen by the Seller in its absolute discretion (and the Buyer cannot object to the same) if the Buyer does not provide its selection by notice to the Seller within 14 days of request from the Seller; and
- (b) all finishes and landscaping to the Common Property will be generally in accordance with the Approvals and be in keeping with the standard of the Development.

11.3 The Buyer acknowledges that:

- (a) the Buyer is entering into this Contract to purchase the Property prior to completion of construction and it is necessary and reasonable for the Seller to have the rights set out in clauses 11.4, 11.5 and 11.6;
- (b) the Draft Building Format Plan and Schedule of Finishes are preliminary only and further detailed design will be carried out by the Seller in accordance with the requirements of all Approvals prior to commencement of construction and continue during construction in conjunction with the licensed builder, such that those items may be impacted upon by such design matters including practical and physical constraints, availability and cost of materials and like considerations;
- (c) as a result the Seller may make changes to the Draft Building Format Plan and Schedule of Finishes (including the floor plan, Optional Upgrades and Colour Scheme);
- (d) the Building Format Plan which will identify the Lot will be prepared following construction. Any dimensions or areas of the Lot on the Draft Building Format Plan are therefore only approximate and may change;
- (e) once the Colour Scheme and Optional Upgrades (if any) have been selected or determined, they cannot be changed by the Buyer without the consent of the Seller which can be granted or refused at the Seller's discretion; and
- (f) the Buyer has no right to require any variation to the construction of the Lot, the Schedule of Finishes, Colour Scheme, Optional Upgrades or other such items.

11.4 Subject to the BCCM Act, the Seller may make the following changes to the Lot:

- (a) substitute materials, finishes, fittings or Chattels in the Lot if the Seller (acting reasonably) is satisfied that the substituted materials, finishes, fittings, colour or items are of similar quality or standard to those contained in the Schedule of Finishes;
- (b) make minor changes to the configuration, layout and size of the Lot (or any part of it) and the Buyer acknowledges a reduction on the area of the Lot of less than five percent (5%) is a minor change; and/or
- (c) alter the numbering of the Lot and/or exclusive use areas (including car park(s)).

11.5 Subject to the BCCM Act, the Seller may make the following changes:

- (a) change the name of the Buildings, Principal Scheme, Scheme and the Development;
- (b) make minor variations to the location of the Lot as shown in the Disclosure Statement compared with the Building Format Plan;
- (c) make any change required to the Land, Development, Buildings, Principal Scheme Land, Scheme Land or Lot required by:
  - (i) any Approvals or requirements of any Authority;
  - (ii) practical necessities of construction including but not limited to requirements of good building practice; or
  - (iii) the unavailability of materials;

- (d) amend the CMSs in accordance with any Approvals or requirement of any Authority, or any construction issues whatsoever [or after registration of the CMS, register a new CMS];
- (e) alter the area or dimensions of the Land, Balance Lots and/or Scheme Land, transfer or dedicate any part of that land, or grant easements, covenants or other encumbrances in accordance with any Approvals or requirements of any Authority (including as road or reserve);
- (f) alter the number or numbering of lots in the Principal Scheme or Scheme or alter the area, location, lot entitlement (Contribution Entitlement or interest entitlement) or permitted use of any lot in the Principal Scheme, Scheme or Development other than the Lot itself;
- (g) alter the Common Property or rights in relation to the use of the Common Property including without limitation grant any exclusive use or special rights over the Common Property or a Body Corporate or Principal Body Corporate asset, or enter into a shared facilities agreement;
- (h) make any variation in the size or location of any area the subject of an exclusive use or special privilege by-law which attaches to the Lot or any other lot in the Principal Scheme or Scheme;
- (i) cause any service or infrastructure to the Principal Scheme, Scheme or Development to provide for bulk supply of services to the Principal Scheme, Scheme or Development including without limitation the bulk supply of electricity (embedded network), gas, hot water, chilled water (for air conditioning) and communications (including phone and data) whether or not this bulk supply would exclude individual suppliers;
- (j) construct any services on or under the Land, Balance Lots, Principal Scheme Land or Scheme Land which need not be protected by an easement;
- (k) excise any land out of the Land, Balance Lots, Principal Scheme Land or Scheme Land (but not the Lot);
- (l) reconfigure or amalgamate any of the lots (other than the Lot) and/or Common Property in the Principal Scheme, Scheme or the Development;
- (m) increase the Body Corporate Levies for the Lot by not more than 10% of the amount estimated in the Disclosure Statement; and
- (n) make any changes to any document in the Disclosure Statement including the CMSs and service agreements (including the utilities, letting and caretaking agreements) as the Seller decides in its absolute discretion.

11.6 Without derogation from the preceding clauses, the Buyer acknowledges that the external treatment to the Lot will be determined by the Approvals and design elements may be amended (colour, materials, textures, stepping and projecting elements) from those proposed in marketing depictions and the Schedule of Finishes, and the Buyer accepts such amendments may impact the appearance of the Lot (such as differentials between transparent and non-transparent elements).

11.7 The Buyer must not Object because of:

- (a) any of the matters listed in clause 11.4, 11.5 and/or 11.6;
- (b) non completion of any improvements to be constructed on the Principal Scheme Land or Scheme Land (other than any exclusive use area or special privilege area of Common Property allocated for the Lot which must be useable for its intended purpose on Settlement);
- (c) the Land, Principal Scheme Land and/or Scheme Land (or any part thereof, including the Lot) being located in a designated transport noise corridor under the *Building Act 1975* (Qld) or any related or subsequent Act dealing with such matters;
- (d) the existence of any:
  - (i) electrical substation and/or transformer, communications facility or other similar utilities infrastructure on or nearby the Land, Principal Scheme Land and/or Scheme Land and easements relating to such infrastructure;
  - (ii) easements or covenants burdening or benefiting the Land, Principal Scheme Land and/or Scheme Land (or any part thereof, including the Lot) including without limitation any

easements or covenants required by any Authority (including without limitation any access, light and/or air, right of way or public thoroughfare easements) and easements between the Land, Principal Scheme Land and/or Scheme Land and any adjoining land (including without limitation access and services easements); and

- (e) any boundary of the Development not being fenced or any boundary fence or wall not being on or within the boundary.

11.8 Without derogation from clause 11.7, the Buyer acknowledges that other parts of the Development may not be completed by Settlement or may be amended or postponed by the Seller or any subsequent owner and the Buyer agrees not to Object.

## 12. DEFECTS AND INSPECTION

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12.1 Subject to clauses 12.2 to 12.9, the Seller shall cause its building contractor to rectify and make good (without cost to the Buyer) within a reasonable time, any defects, shrinkage or other faults in the Lot:

- (a) due to faulty materials or workmanship not in accordance with the building contract and notified to the Seller by the Buyer in writing before Settlement or within 3 months after the Settlement Date; and
- (b) in the nature of scratches, chips, dents, marks and similar imperfections if notified to the Seller by the Buyer in writing before Settlement pursuant to clause 12.2(a).

12.2 The Buyer can only give 3 defects notices pursuant to this clause 12 as follows:

- (a) one prior to settlement (**First Defects Notice**) which is the only notice which can include defects of the kind referred to in clause 12.1(b);
- (b) one within 14 days after Settlement (**Second Defects Notice**); and
- (c) one between the Second Defects Notice and that day 3 months after Settlement (**Third Defects Notice**). No defects notices whatsoever can be given after the Third Defects Notice.

12.3 The Seller does not need to remedy:

- (a) defects in any Chattel for which there is a manufacturer's or supplier's warranty; and
- (b) normal maintenance requirements, damage due to wear and tear, small imperfections, minor shrinkage or minor settlement cracks.

12.4 Further to clause 12.3(b), the Buyer accepts that the car park floors, driveways, concrete slabs, terraces, tiles areas and exposed concrete surfaces, cornices and architraves and similar areas might develop imperfections such as cracks because of temperature changes and normal settlement and the Seller does not have to rectify those kinds of defects or imperfections under this clause 12 unless they have resulted from defects in workmanship or materials and the Buyer otherwise complies with this clause 12.

12.5 The Buyer must give the Seller and the Seller's building contractors and sub-contractors reasonable access to the Lot at no charge to undertake any rectification or repair work required under this clause 12 or to rectify any defect in Common Property and/or an adjoining lot (only if no other means of access is practical).

12.6 The Buyer may:

- (a) make one pre-settlement inspection to identify or confirm the identity of the Lot and car park(s) and for the purpose of identifying defects (if any), at a reasonable time prospectively in the month before the anticipated settlement date notified by the Seller to the Buyer, accompanied by a representative of the Seller; and

- (b) bring a qualified building inspector with them to the inspection,

but only one inspection shall be allowed unless the Seller otherwise agrees.

12.7 The Buyer cannot Object by reason of any defect, fault or deficiency in the Property, the Buildings, Common Property or Chattels unless:

- (a) prior to settlement, there is a Significant Defect in which circumstance:
  - (i) the Significant Defect must be rectified by the Seller prior to Settlement; and
  - (ii) the Seller can by notice to the Buyer extend the Settlement Date by up to 90 days to allow for such rectification; and
- (b) following settlement, the Seller fails to rectify a defect for the Lot in the time frame required by clause 12.1 in which circumstance any valid claim is limited to a reasonable rectification costs only.

12.8 The Buyer acknowledges:

- (a) certificates of classification (if required by law) may be issued at different time for different parts of the Buildings and/or Development and uses may also commence at different times;
- (b) facilities in the Buildings and/or Development, including for the Principal Scheme and/or Scheme, may be operational at different times including after the Settlement Date;
- (c) settlements of Lots may occur progressively on different dates; and
- (d) the Seller may give notice triggering the Settlement Date notwithstanding certificates of classification have not issued for every lot in the Scheme or all parts of the Buildings (as applicable),

and the Buyer agrees not to Object.

12.9 Any dispute as to a defect under this clause 12 shall be referred to the Seller's architect (acting as an expert) for determination. Such determination shall be issued by the Architect in writing to both parties, and shall be final and binding.

### **13. SETTLEMENT**

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13.1 Settlement must occur:

- (a) on the Settlement Date;
- (b) between the hours of 9.00am and 4.00pm; and
- (c) at the place nominated by the Seller's Solicitor in the Brisbane CBD.

13.2 Despite anything else in this Contract, Settlement must not take place earlier than 14 days after the Seller gives notice that the Scheme has been established or changed.

13.3 If the Seller gives notice pursuant to section 214 of the BCCM Act, the Settlement Date is automatically extended to 1 Business Day after expiry of the period prescribed in that section if the Settlement Date would otherwise have been before expiry of that period.

13.4 The Seller may, at its absolute discretion, at any time prior to Settlement, extend and further extend the Settlement Date up to a total period of 90 days by written notice to the Buyer.

13.5 The Buyer (or the Buyer's Solicitor) must prepare the Transfer Documents and send them to the Seller's Solicitor at least 5 Business Days before the Settlement Date. If:

- (a) the Buyer does not comply with this requirement, then the Seller can at its discretion by notice to the Buyer:
  - (i) extend the Settlement Date until 5 Business Days after receipt of the Transfer Documents; or
  - (ii) prepare the Transfer Documents and Form 24. The Seller is not required to complete any of the information about the Buyer in the Form 24;
- (b) the Buyer's Solicitor undertakes in writing to hold the Transfer Documents for stamping purposes only and to the Seller's order pending Settlement (including by returning the same immediately

on request), then the Seller shall return/provide (as the case may be) the Transfer Documents to the Buyer's Solicitor; and

- (c) if the Buyer is not represented by a solicitor and pays the Seller's reasonable expenses, if requested by the Buyer, the Seller will produce the Transfer Documents at the Office of State Revenue for stamping before Settlement.

13.6 At Settlement, the Buyer must:

- (a) pay the Seller the Balance Purchase Price plus or minus any adjustments under this Contract by bank cheque(s) [from an Australian licensed trading bank] as the Seller's Solicitor directs; and
- (b) give to the Seller the Body Corporate Notice signed by the Buyer or on the Buyer's behalf.

13.7 In exchange, at Settlement, the Seller must give the Buyer:

- (a) vacant possession of the Lot;
- (b) any instrument of title for the Lot required to register the transfer to the Buyer;
- (c) Transfer Documents (unless previously given) capable of immediate registration after stamping;
- (d) a release in registrable form of any mortgage or withdrawal of any caveat lodged over the Lot;
- (e) if there is a charge under the PPSR affecting the Lot or Chattels, a release of that charge (which may be in the form of a deed poll or other document from the security holder and which may not be capable of registration, whether by a financing change statement or otherwise, on the PPSR as among other reasons the charge may affect other property not released);
- (f) if a bank guarantee is held under clause 5 the bank guarantee; and
- (g) the keys, codes and/or devices for all locks and security devices for the Lot and to allow access to the Lot (but these may instead be made available for collection by the Buyer at a location nominated by the Seller).

13.8 The Buyer is responsible for the cost of all bank cheques the Seller requires and no adjustments shall be made for the same.

13.9 On Settlement:

- (a) title to the Chattels (which subject to clause 13.7(e), must be free from encumbrances) passes to the Buyer; and
- (b) the Seller assigns to the Buyer the benefit of any manufacturers' warranties in relation to the Chattels to the extent they are assignable.

13.10 Subject to clause 25, risk in the Property passes from the Seller to the Buyer on Settlement.

## **14. ADJUSTMENTS TO PRICE**

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14.1 Subject to the other provisions of this clause 14:

- (a) the Seller is liable for all Outgoings for the Lot up to and including the Settlement Date; and
- (b) the Buyer is liable for all Outgoings for the Lot after the Settlement Date.

If necessary, Outgoings must be apportioned between the Seller and the Buyer on Settlement.

14.2 Subject to the other provisions of this clause 14, Outgoings must be adjusted:

- (a) if paid, on the amount actually paid;
- (b) if assessed but unpaid on the amount payable (excluding any discount); or
- (c) if not assessed, on the amount that the relevant Authority advises (whether verbally or in writing to the Seller's Solicitor) will be assessed, or if no advice is available, on the latest assessment (in either case excluding any discount).

- 14.3 If it is the practice of the Authority to separately assess an Outgoing for the Lot from the date of registration of the Building Format Plan onwards, there will be no apportionment or adjustment to the Price for that Outgoing and the Buyer will be responsible for that Outgoing on and from the date of the registration of the Building Format Plan. This clause prevails to the extent of any inconsistency with clause 14.1.
- 14.4 Until separate assessments of Outgoings are issued or available for the:
- (a) Lot, then the Lot is to be treated as liable for the same proportion of Outgoings levied or paid against the Land or against the Lot and other lots in the Scheme as the Contribution Lot Entitlement bears to the total contribution lot entitlements of all lots in the Scheme; and
  - (b) Land, then the Land is to be treated as liable for the same proportion of those outgoings as the area of the Land bears to the total area of all land to which the assessment relates.
- 14.5 Land tax is to be apportioned on the basis that as at midnight of 30 June immediately preceding Settlement the Seller owned no other land other than the Seller's interest in the:
- (a) Land; or
  - (b) Lot, only if there was at that date a separate valuation for land tax purposes for the Lot.
- 14.6 If the Authority does not issue a clearance to the Buyer before Settlement for an Outgoing for the Lot, Principal Scheme Land, Scheme Land or Land (as applicable):
- (a) the Buyer cannot delay or refuse to complete or require that any of the Balance Purchase Price be retained or make or demand any payment from the Balance Purchase Price; and
  - (b) the Seller undertakes to pay all Outgoings owing or to be assessed on the Lot or Land up to and including the Settlement Date or date of registration of the Building Format Plan (as applicable) and the Buyer accepts that undertaking; and
  - (c) to the extent the Outgoings are capable of being identified at Settlement, the ones that are subject to this clause are to be adjusted under clause 14 as if they had been paid by the Seller.
- 14.7 If an Outgoing is adjusted on the amount that proves to be different from the actual amount of the Outgoing for the relevant period then either party may require a re-adjustment.

## **15. GST**

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- 15.1 Subject to clause 15.4, the Purchase Price and Deposit include any applicable GST.
- 15.2 The Buyer and the Seller agree that the Seller will adopt the margin scheme pursuant to division 75 of the GST Act in calculating the Seller's liability for GST in respect of the supply of the Property under the Contract.
- 15.3 If the Seller for any reason is not able to apply the margin scheme, the Seller may give notice to the Buyer that the margin scheme will not apply and will not be used by the Seller to calculate the Seller's liability for GST in respect of the supply of the Property under the Contract.
- 15.4 At the Contract Date, the rate of GST is 10%. If the rate of GST changes after the Contract Date and the Seller's liability to GST increases the Buyer shall on settlement pay the Seller (in addition to the Balance Purchase Price) a sum equal to the Seller's increased GST liability.
- 15.5 This clause does not merge on completion.

## **16. NO CAVEAT**

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- 16.1 The Buyer must not lodge nor permit to be lodged a caveat affecting any part of the Land, Principal Scheme Land, Scheme Land, or the Lot, except if this Contract is an instalment contract under the *Property Law Act 1974 (Qld)*, and then only in relation to the Lot following creation of a separate title for the Lot.
- 16.2 The Buyer irrevocably appoints the Seller and each director, secretary and attorney (under power of attorney) of the Seller, and their substitutes, jointly and severally to be the attorney for the Buyer to sign and register a withdrawal of any caveat lodged by the Buyer or contrary to clause 16.1.

## 17. BUYER'S DEFAULT

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### 17.1 If the Buyer:

- (a) breaches any term of this Contract, after having been given notice by the Seller specifying the default requiring rectification within 10 Business Days, and the default remaining unrectified after expiry of such notice period; or
- (b) breaches any Essential Term;

then Seller may, at its election:

- (c) terminate this Contract, keep the Deposit and sue the Buyer for damages;
- (d) sue the Buyer for damages, specific performance or any other equitable remedy; and/or
- (e) exercise any other legal right (under this Contract, at law or in equity) the Seller has because the Buyer breached this Contract.

### 17.2 If the Buyer:

- (a) is a natural person (or for more than one, any one of them) and:
  - (i) dies;
  - (ii) becomes intellectually, physically or psychologically disabled so as, in the reasonable opinion of the Seller, likely to be unable to complete this Contract on time; or
  - (iii) becomes 'insolvent under administration' as that term is defined in the Corporations Act;
- (b) is a body corporate (or for more than one, any one of them) and:
  - (i) an application is made to a court for an order, or an order is made, for it to be wound up or is placed into liquidation of any kind (whether voluntarily or not);
  - (ii) any action is taken to appoint an external administrator in respect of it, or an external administrator is appointed (whether voluntarily or not); or
  - (iii) any proposal is made to take advantage of any law for the relief of debtors in adverse financial circumstances;

then the Seller may, at its election, terminate this Contract. If this Contract is terminated under clause 17.2(a)(i) or (ii) all money paid by the Buyer will be refunded (and any bank guarantee held under clause 5 returned) and no party will have any further claim against the other. If this Contract is terminated under clause 17.2(a)(iii) or 17.2(b), then the Seller is entitled to the Deposit absolutely (and can call on any bank guarantee held under clause 5 if necessary).

### 17.3 If the Seller terminates this Contract under clause 17.1, 17.2(a)(iii) or 17.2(b) then, without notice to the Buyer, the Seller may re-sell the Lot as it sees fit. If the Seller re-sells the Lot then:

- (a) the Seller may enter into, vary or cancel any contract of sale and use any manner of sale it so desires; and
- (b) the Buyer must pay any deficiency in price on re-sale and the Seller's costs and expenses of re-possessing the Lot, the terminated sale to the Buyer, the re-sale, the Seller's attempts to re-sell and the Outgoings that would have been payable by the Buyer if this Contract had settled.

Amounts payable under this clause 17.3 may be recovered as liquidated damages. Any profit on a re-sale belongs to the Seller absolutely.

### 17.4 The Seller is entitled to damages for any loss which it suffers as a result of the Buyer's default, including legal costs on a full indemnity basis incurred by the Seller in exercising its rights under this clause 17.

## **18. SELLER'S DEFAULT**

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18.1 If the Seller breaches any Essential Term the Buyer may terminate this Contract. If the Contract is terminated under this clause 18 the Deposit and other money paid under it must be refunded in full to the Buyer and no party will have any further claim against the other.

## **19. INTEREST**

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19.1 Without affecting any other rights, the Buyer must pay interest if:

- (a) it does not pay an amount due under this Contract when it is due;
- (b) the Seller agrees to give an extension of the Settlement Date (unless the Buyer specifically requests a waiver of any interest and the Seller agrees in writing to the same); and/or
- (c) there is an extension under clause 13.5(a).

19.2 Interest under clause 19.1:

- (a) is payable at the Interest Rate;
- (b) is calculated on the unpaid amount;
- (c) is payable from the day after the due date or the original Settlement Date to the date the payment is made;
- (d) is capitalised on the first of each month while unpaid; and
- (e) must be paid on Settlement, unless this Contract is terminated by the Seller in which case the interest is payable on demand.

19.3 Should the Buyer seek an extension of the Settlement Date and the Seller grants the extension, then the parties agree that the Buyer must pay an administration fee (at settlement) of \$250 plus GST to the Seller's Solicitor.

19.4 Notwithstanding clause 19.1 and 19.3, the Seller reserves its right to consider extension request at its absolute discretion.

## **20. PERSONAL GUARANTEE AND INDEMNITY – BUYER IS A COMPANY OR TRUSTEE**

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20.1 If the Buyer is a company or trustee, unless all the Guarantors and the directors of the company (or in the case of a trustee, persons of financial substance satisfactory to the Seller) sign this Contract as Guarantors before the Seller signs this Contract, the Seller may at any time after that until Settlement terminate this Contract by notice to the Buyer.

20.2 If the Contract is terminated under this clause 20 all money paid by the Buyer will be refunded (and any bank guarantee held under clause 5 returned) and no party will have any claim against the other.

20.3 This guarantee and indemnity is given to the Seller by the Guarantors, because the Seller agrees to enter into this Contract with the Buyer at the request of the Guarantors.

20.4 The Guarantors unconditionally and irrevocably:

- (a) guarantee to the Seller the performance by the Buyer of all its obligations under this Contract, including the obligations to pay any money including without limitation the Purchase Price; and
- (b) indemnify the Seller against all liability, loss or damage incurred or suffered by the Seller as a result of a breach of this Contract by the Buyer, including a breach of the obligations to pay money.

20.5 This guarantee and indemnity is a continuing security and is not discharged by a payment.

20.6 The Guarantors do not require the Seller to first bring proceedings against the Buyer, or to first enforce a right against the Buyer or another person, including another person who has provided security for this Contract.

- 20.7 The Guarantors' obligations are not affected by anything that would affect them but for this clause, including:
- (a) the Seller giving the Buyer time to pay or to comply with another obligation;
  - (b) mistakes by the Seller;
  - (c) the Seller agreeing to change the terms of this Contract;
  - (d) the Seller delaying the exercise of its right against the Buyer;
  - (e) when obligations owed by other people with respect to this Contract, including other security providers, are invalid or cannot be enforced by the Seller;
  - (f) the Seller accepting an earlier breach of this Contract by the Buyer;
  - (g) the Seller failing to exercise its rights on a previous occasion; and
  - (h) not all Guarantors signing the Contract or being bound by the terms of this guarantee and indemnity.
- 20.8 The Guarantors agree to:
- (a) pay the Seller, on demand, for all costs and expenses incurred by the Seller enforcing this guarantee and indemnity. These costs and expenses are payable by the Guarantor on a full indemnity basis;
  - (b) pay any stamp duty and taxes that apply to this guarantee and indemnity;
  - (c) if the Seller is liable to pay GST because the Seller is entitled to a payment from the Guarantors, then to pay the Seller an additional amount equal to the amount of the payment multiplied by the rate of GST; and
  - (d) pay interest on any amount due under this guarantee and indemnity from the day after the amount is due in accordance with clause 19.1.
- 20.9 The Seller may assign the benefit of the Guarantors' obligations under this guarantee and indemnity to any person who is a transferee or assignee within the meaning of clause 21, and the Guarantors must sign any document reasonably required by the Seller to effect such an assignment.
- 20.10 If the Guarantors:
- (a) consist of more than one person, this guarantee and indemnity binds each person jointly and each person individually; and
  - (b) or any one of the Guarantors is a trustee, the relevant person is bound both personally and in its capacity as trustee.

## **21. SALE OF DEVELOPMENT**

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- 21.1 The Seller may, at any time before Settlement, transfer or assign its interests in the Land, Principal Scheme Land, Scheme Land and/or Lot (whether the whole or any relevant part of those lots) to any person or entity. If the Seller does so, the following provisions apply (if applicable):
- (a) the Seller will provide a deed poll signed by the transferee or assignee in which the transferee or assignee agrees to be bound by the obligations under this Contract;
  - (b) the terms of this Contract (including any guarantee) will remain binding on the Buyer and the Guarantors and will be enforceable by the assignee or transferee; and
  - (c) on delivery of the deed poll to the Buyer, the Seller is released from all liabilities and obligations under this Contract (whether arising before or after its delivery).
- 21.2 The Seller may also novate its rights and obligations under this Contract to any person at any time by giving to the Buyer a deed of novation signed by that person. The terms of the novation may be decided by the Seller but may provide that the Seller is released from all obligations under this Contract, regardless of when they arose. The Buyer must promptly sign the deed and return it to the Seller (or as

directed by the Seller) and waive any cooling off period that comes into effect as a result of the novation.

## **22. INSTALMENT CONTRACT**

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- 22.1 The Seller may at any time (whether before or after the Contract Date) mortgage or charge the Land (whether the whole or any part thereof).
- 22.2 If this Contract is an instalment contract under *Property Law Act 1974*, the Buyer consents to the Seller:
- (a) mortgaging the Land (whether the whole or any part thereof) from time to time; and
  - (b) transferring or assigning its interest in the Land pursuant to clause 21,
- and agrees to sign anything necessary to give that consent.

## **23. BODY CORPORATE MEETINGS**

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- 23.1 The Seller may convene the first annual general meeting and any extraordinary meetings of the Principal Body Corporate or Body Corporate to:
- (a) conduct the business required by the BCCM Act;
  - (b) make the Principal Body Corporate or Body Corporate enter into any engagements disclosed in the Disclosure Statement (with any variations permitted by this Contract);
  - (c) enter into any proposed facilities sharing agreements;
  - (d) grant any exclusive use or special rights, easements or any other rights or encumbrances contemplated by this Contract; and
  - (e) conduct any other business which the Seller considers necessary.
- 23.2 The Seller is entitled to retain any money paid for causing any agreement to be entered with the Principal Body Corporate or Body Corporate with respect to management rights (including without limitation caretaking and letting rights) or any other service or utilities contracts.

## **24. ONGOING DEVELOPMENT AND MARKETING**

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- 24.1 The Buyer acknowledges that construction of the Development will be carried out in stages (including without limitation the later development of the Balance Lots and construction on the Common Property of the Principal Scheme). The Buyer will not Object or make any complaint in relation to:
- (a) any building operation (including construction) of any improvements or any other things and the noise, nuisance or other inconvenience which might arise from the same; or
  - (b) the use by the Seller and persons authorised by it of parts of the Development for construction access and to store civil materials, building materials, vehicles, equipment or fill.
- 24.2 The Buyer must comply with any reasonable directions of the Seller and their construction contractor whilst construction or building operations are being carried out including directions related to traffic flow both vehicle and pedestrian.
- 24.3 The Buyer must not Object or make complaint:
- (a) to surrounding residential, retail and commercial use including the inconvenience, noise, odour, disturbance or any other matters pertaining to the same; and/or
  - (b) to reasonable methods used by the Seller in marketing lots in the Development including, without limitation:
    - (i) the use of signs on the Land including the Principal Scheme Land or the Scheme Land;
    - (ii) opening of displays including display units; and
    - (iii) people passing over the Land including the Principal Scheme Land or the Scheme Land.

- 24.4 Notwithstanding any other provision of this Contract, the Seller may in the Seller's absolute discretion:
- (a) vary in any manner (such as the use, layout, size, number or design) any part of the Development outside of the Land that is intended by the Seller as at the Contract Date;
  - (b) carry out the development of the Balance Lots or the Development generally progressively in any number of stages and in any sequence determined by the Seller;
  - (c) elect not to carry out any proposed development in any part of the Development generally (or delay it at any time); or
  - (d) do any other thing that in the Seller's opinion is necessary in order to facilitate the carrying out of the Development.
- 24.5 The Buyer consents to any applications for development approval made to any Authority for the Development and must, if requested by the Seller, sign and return any instrument of consent presented to the Buyer by the Seller within 5 Business Days after the presentation.
- 24.6 The Buyer will not lodge, or encourage, support or otherwise in any way assist any other person, company or entity to lodge any objection to any development applications or any matters pertaining to any development applications for the Development.
- 24.7 The Buyer acknowledges that:
- (a) views from the Lot, Principal Scheme Land and/or Scheme Land may be obstructed including without limitation by building or structural elements, development outside of the Land (over which the Seller has no control) and/or outside the Land as a result of the development of the Land generally (including as varied); and
  - (b) the Railway may cause interference or disruption to the Principal Scheme Land or Scheme Land (including the Lot) in the course of operations by or by the redevelopment of the Railway, including interference or disruptions by way of the Disturbances.
- 24.8 The Buyer agrees not to take any action against, make any objection to or make any demands upon the Seller, the Principal Body Corporate or the Body Corporate in relation to views or Disturbances.

## **25. EARLY POSSESSION**

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- 25.1 If the Seller agrees to grant possession to the Lot to the Buyer before Settlement:
- (a) the Property is at the risk of the Buyer from the date the Seller permits early possession;
  - (b) the Buyer must insure the Property to the Seller's satisfaction;
  - (c) until Settlement the Buyer must keep and maintain the Property in good and substantial repair and not alter or add to the Property or remove any of the Property without the Seller's prior written consent;
  - (d) entry into possession by the Buyer is under a licence personal to the Buyer, revocable at any time by the Seller, and does not create a relationship of landlord and tenant;
  - (e) the Buyer must not let or part with possession or occupancy of the Property;
  - (f) if the Buyer defaults in observing any of its obligations under this Contract, it must immediately upon demand give up possession of the Property to the Seller;
  - (g) the Seller or any person authorised by the Seller may at any reasonable time before Settlement enter and view the Property and do anything or carry out any works (whether permanent or temporary) that the Seller considers necessary for the preservation or repair of the Property or the Common Property; and
  - (h) the Buyer indemnifies the Seller against any cost, damage or liability incurred by the Seller directly or indirectly as a result of the Buyer's possession of the Property.

- 25.2 Should the Buyer seek early possession, then the parties agree that the Buyer must pay an administration fee (at Settlement) of \$250 plus GST to the Seller's Solicitor for facilitating the request (whether or not possession is granted).

## **26. BUYER'S MANAGED INVESTMENT SCHEME ACKNOWLEDGEMENT**

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26.1 The Buyer acknowledges that:

- (a) ASIC has issued PS140 representing ASIC's interpretation of the application of the managed investment provisions contained in Chapter 5C of the Corporations Act;
- (b) for a serviced strata apartment that is a management investment scheme the Corporations Act requires inter alia that the scheme be registered, the operator of the scheme be licensed and a disclosure statement/prospectus be issued;
- (c) neither the Seller nor Letting Agent proposes to conduct a serviced strata apartment operation on the Scheme;
- (d) there is no obligation on any buyer of a lot in the Scheme to make that lot available to the Seller or Letting Agent for letting to prospective tenants;
- (e) there is no understanding between or amongst buyers of lots and the Seller or Letting Agent that lots will be made available to the Letting Agent for letting on a rotational or other basis, but that a prospective tenant has the right to select a lot and prefer one lot over another; and
- (f) if a buyer of a lot makes their lot available to the Letting Agent for letting to prospective tenants there will be no pooling of rental income between the lots.

26.2 Because of clause 26.1, the Seller considers neither its sale of lots nor the operation of the letting business to be conducted by the Letting Agent is a service strata scheme and that neither is subject to PS140 or Chapter 5C of the Corporations Act.

26.3 The Buyer acknowledges that:

- (a) it has had the opportunity to obtain independent legal advice about PS140 and Chapter 5C of the Corporations Act, including any rights it may have under section 601MB of the Corporations Act;
- (b) if it is determined that a service strata scheme is being operated at the Development, then it would not be equitable for the Buyer to invoke the provisions of Chapter 5C of the Corporations Act; and
- (c) the Seller will rely on this clause to obtain finance for the Development.

## **27. BUYER AS A FOREIGN PERSON**

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27.1 The Buyer warrants to the Seller that the statement in the Information Table as to whether the Buyer is a Foreign Person is correct. Clauses 27.2 to 27.6 will only apply if the Buyer (one or more of them) is a Foreign Person.

27.2 This Contract is conditional upon the Buyer obtaining FIRB Approval by the FIRB Approval Date. This clause is regarded as satisfied once the FIRB Approval is given.

27.3 If the FIRB Approval is not obtained by 5.00pm on FIRB Approval Date, either party may, by written notice to the other, terminate this Contract. In that case this Contract will be at an end and the Deposit and other money paid under this Contract must be refunded in full to the Buyer and no party will have any further claim against the other.

27.4 The Buyer:

- (a) must within 7 days of the Contract Date apply to the FIRB for FIRB Approval;
- (b) give notice to the Seller before the FIRB Approval Date as to whether FIRB Approval has been obtained or not; and

- (c) do all things necessary to obtain the FIRB Approval and provide the Seller with copies of any documents to or from the FIRB requested by the Seller.

27.5 If the Buyer fails to comply with clause 27.4, it will be in default under this Contract and the Seller may, without limitation, exercise any of its rights under this Contract (including terminating this Contract).

27.6 The Buyer acknowledges that the purchase of the Lot by the Buyer does not in any way entitle the Buyer to a right of immigration, residency or visa for entry into Australia and that the Seller and the Agent have not made any representations in relation to these matters.

## **28. POWER OF ATTORNEY AND PROXY**

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28.1 The Buyer irrevocably appoints the Seller and each director, secretary and attorney (under power of attorney) of the Seller, and their substitutes, jointly and severally to be the attorney for the Buyer for the following purposes:

- (a) to attend and vote (or do either) in the Buyer's name at any meetings of the Body Corporate or the Committee; and
- (b) complete, sign and lodge any voting paper (or any other document including a proxy appointment form, corporate owner nominee notification form or owner's representative notification form and any other notice under the Regulation Module) to allow the Seller to vote in the Buyer's name at all or any meetings of the Body Corporate or the Committee in respect of any motion or resolution, for or relating to any one or more of the matters referred to in chapter 2 of the Disclosure Statement.

28.2 Insofar as it is lawful, the Seller's rights under clause 28.1 can be exercised to the exclusion of the Buyer, if the Seller requires such exclusion.

28.3 The power of attorney contained in this clause 28.1 expires on the later of:

- (a) one year after the Scheme is established to create the Lot; or
- (b) as provided by the BCCM Act from time to time.

28.4 While the power of attorney contained in this clause 28 remains in force, the Buyer must not transfer the Lot except to a person who has first signed a deed in the form required by the Seller under which that person agrees to comply with this clause 28 as if it was the Buyer named in this Contract. If the Buyer does not comply with this clause, the Buyer indemnifies the Seller against all loss and damage incurred as a result.

28.5 The Buyer must vote at meetings of the Body Corporate and Committee as directed by the Seller. This provision expires on the date the power of attorney expires under clause 28.3.

28.6 The Buyer irrevocably appoints the Seller (including each director and secretary and attorney (under a power of attorney)) and it substitutes jointly and severally to be the proxy to act for the Buyer at the Body Corporate meetings and vote on the following issues:

- (a) engaging a body corporate manager or service contractor, authorising a person as letting agent (and any deed of consent required by any financier relating to such engagement or authorisation) or entering into a facilities sharing agreement;
- (b) consenting to the recording of a new community management statement;
- (c) the giving of an occupation authority to a service contractor or letting agent under the Regulation Module;
- (d) granting encumbrances in relation to the common property outlined in the CMSs; and
- (e) adoption of body corporate budgets.

28.7 The proxy appointment expires on the date the power of attorney expires under clause 28.3.

28.8 The Buyer must sign and return to the Seller any documents reasonably required by the Seller in connection with this power of attorney and proxy within 10 Business Days of receipt from the Seller.

## 29. NOTICES

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29.1 All notices given under this document:

- (a) must be in writing;
- (b) may be signed, given and received by a party's solicitor; and
- (c) may be delivered in person, by mail, by facsimile transmission or email transmission to the address for service specified in in the Information Table.

29.2 A party may change its particulars for service by notice in writing to the other parties.

29.3 A notice sent by:

- (a) post, will be deemed received on the 2<sup>nd</sup> Business Day after posting from Australia and on the 7<sup>th</sup> Business Day after posting from overseas; and
- (b) facsimile transmission, will be deemed received on the date stated on the facsimile transmission report produced by the machine sending the facsimile.

29.4 Whilst notices under this Contract may be sent by email they are not given until they are capable of being retrieved by the addressee at the nominated email address in accordance with section 24 of the *Electronic Transactions (Queensland) Act 2001*.

## 30. TIME

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30.1 Time is of the essence of this Contract save and except for the time of day on the Settlement Date scheduled for settlement (but time is of the essence as to the Settlement Date itself).

30.2 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

30.3 Where something is done or received after 5.00pm on any Business Day, it will be taken to have been done or received on the following Business Day.

30.4 Where a provision in this agreement requires anything to be done on day that is not a Business Day, that matter or thing may be done or will be taken to have been done on the next Business Day.

## 31. PRIVACY

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31.1 The Privacy Policy is to comply fully with the National Privacy Principles for the fair handling of personal information as set out in the Privacy Act 1988 (as amended).

31.2 The Seller will provide to the Buyer on request, access to the Buyer's personal information. More information on how the Seller manages the personal information it holds is available from the Seller whose contact details are shown in the Information Table.

31.3 The Seller uses the Buyer's personal information for the purpose of providing the Seller's products and services to the Buyer, improving and marketing the Seller's products and services generally. The Seller may use the information to make further contact with the Buyer for the purpose of providing information on the Seller's range of products and services.

31.4 The Seller may disclose the Buyer's personal information as may be required to the Seller's consultants, related companies, contractors, financiers, credit providers, insurers, marketing agents, sales agents, rental agents and staff and to any authority charged with the responsibility of recording transactions.

31.5 The Seller may disclose the Buyer's contact details to other buyers (or their solicitors) in the Development who may become adjoining or nearby owners of the Buyer (following settlement of the respective contracts) for various purposes such as delivery of notices.

31.6 The Buyer consents to the Seller using the Buyer's information in the Seller's absolute discretion, for the purposes, uses and disclosures described above, or in the Seller's opinion related to them, and acknowledges that in providing consent to the disclosure and use of the Buyer's personal information,

that such information may be utilised for any other authorised purpose under Part IIIA of the *Privacy Act 1988* (as amended).

## **32. GENERAL**

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### **32.1 Severability**

The provisions of this Contract and every part of each provision will be severable. If any provision is found to be unlawful, void or unenforceable, then that provision will be read down to the extent necessary to ensure that it does not infringe any law or is not otherwise void or unenforceable so as to give it a valid operation of a partial character. If the infringing provision cannot be read down it will be deemed to be deleted and the remaining provisions will continue to have their full force and effect.

### **32.2 Governing law**

This document will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the Courts of Queensland.

### **32.3 Reference to a party**

Any reference to a party in this document includes, and any obligation or benefit under this document will bind or take effect for the benefit of, that party's executors, trustees, administrators, successors in title and permitted assigns.

### **32.4 Further assurances**

Each party must sign all documents and do all things necessary to give full effect to this Contract.

### **32.5 No merger**

Despite Settlement and registration of the Transfer Document, any term of this Contract that can take effect after Settlement or registration remains in force.

### **32.6 Duty and legal fees**

Each party will bear its own legal and other costs and expenses relating to this Contract. The Buyer must pay any duty.

### **32.7 Joint and several**

An obligation of two or more persons under this document binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this document will take effect for the benefit of those persons jointly and severally.

### **32.8 Buyer as trustee**

If the Buyer is a trustee, the relevant person is bound both personally (in its own capacity) and its capacity as a trustee.

### **32.9 Waiver**

The failure of a party to this document to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

### **32.10 Execution**

- (a) This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- (b) The Buyer and the Seller agree that this Contract may be signed by facsimile or other electronic transmission by one party signing the Contract and transmitting the Contract to the other party and that party counter-signing and transmitting the signed Contract back to the first party and upon receipt the Contract will be deemed to be formed and binding on the parties.

### 32.11 Assignment or sale by the Buyer

- (a) The Buyer cannot assign its interest in the Contract without obtaining the Seller's prior written consent which can be given or refused by the Seller in its absolute discretion.
- (b) The Buyer cannot agree to on-sell the Property prior to Settlement without the Seller's prior written consent, which cannot be unreasonably withheld but which can be on the condition that the Buyer must first deliver to the Seller a deed in favour of the Seller in the form approved by the Seller, signed by the purchaser or transferee agreeing to be bound by all ongoing obligations of the Buyer under this Contract (including without limitation clause 28).
- (c) If the Buyer fails to comply with this clause 32.11, the Buyer indemnifies the Seller against all loss and damage incurred by the Seller as a result.

## 33. ELECTRONIC SETTLEMENT

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### 33.1 Definitions

The meanings of the terms used in this clause are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Digitally Sign and Digital Signature</b>	have the meaning in the ECNL
<b>ECNL</b>	the <i>Electronic Conveyancing National Law (Queensland)</i>
<b>Electronic Conveyancing Documents</b>	has the meaning in the <i>Land Title Act 1994</i>
<b>Electronic Lodgement</b>	lodgement of a document in the Land Registry in accordance with the ECNL
<b>Electronic Settlement</b>	settlement facilitated by PEXA
<b>Electronic Workspace</b>	a shared electronic workspace within PEXA that allows the Buyer and Seller to affect Electronic Lodgement and Financial Settlement
<b>Financial Settlement</b>	the exchange of value between Financial Institutions in accordance with the Financial Settlement Schedule
<b>Financial Settlement Schedule</b>	the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts
<b>PEXA</b>	the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions and lodgement of Land Registry documents
<b>Qualifying Conveyancing Transaction</b>	A transaction that is not excluded for Electronic Settlement by the rules issued by PEXA, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction

### 33.2 Application of clause

- (a) This clause 33 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement and overrides any other provision of this Contract to the extent of any inconsistency.

- (b) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for this clause.
- (c) This clause 33 (except clause 33.6(b)) ceases to apply if either party gives notice under clause 33.6(a) that settlement will not be an Electronic Settlement.

### 33.3 Completion of Electronic Workspace

- (a) The parties must:
  - (i) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (ii) do everything else required in the Electronic Workspace to enable settlement to occur on the Settlement Date.
- (b) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4.00pm AEST.
- (c) If any part of the Purchase Price is to be paid to discharge an Outgoing:
  - (i) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant Authority; and
  - (ii) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (d) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
  - (i) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (ii) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 33.3(d)(i);
  - (iii) the Seller's Solicitor will hold the money as Deposit Holder under the Contract; and
  - (iv) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 33.4 Electronic Settlement

- (a) Clauses 13.1(c) and 13.5 do not apply.
- (b) Payment of the Balance Purchase Price plus or minus any adjustments under this Contract electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 13.6(a).
- (c) The Seller will be taken to have complied with clauses 13.7(c) and 13.7(d) if, at settlement, the Electronic Workspace contains Transfer Documents and releases (if applicable) for Electronic Lodgement in the Land Registry.
- (d) The Seller will be taken to have complied with clauses 13.7(e), 13.7(f) and 13.7(g) if the Seller's Solicitor:
  - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
  - (ii) gives a written undertaking to provide those to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and

if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession. Clause 13.7(g) may be complied with by making those items available for collection by the Buyer at a location nominated by the Seller.

- (e) The Buyer will be taken to have complied with clause 13.6(b) if the Buyer's Solicitor:
- (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
  - (ii) gives a written undertaking to provide those to the Seller or Seller's Solicitor no later than the Business Day after settlement; and

if requested by the Seller, provides copies of documents in the Buyer's Solicitors possession.

- (f) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (g) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

### 33.5 Computer System Unavailable

- (a) If settlement fails and cannot occur by 4.00pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or PEXA is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.
- (b) A party is not required to settle if Electronic Lodgement is not available. If the parties agree to Financial Settlement without Electronic Lodgement, settlement is deemed to occur at the time of Financial Settlement.

### 33.6 Withdrawal from Electronic Settlement

- (a) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (b) A notice under clause 33.6(a) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
- (i) the transaction is not a Qualifying Conveyancing Transaction;
  - (ii) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to PEXA; or
  - (iii) the Buyer's or Seller's Financial Institution is unable to settle using PEXA.
- (c) If clause 33.6(b) applies:
- (i) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (ii) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

### 33.7 Costs

Each party must pay its own fees and charges of using PEXA for Electronic Settlement.

**SPECIAL CONDITIONS**

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**EXECUTION**

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the Contract during the statutory cooling-off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about the Contract and his or her cooling off rights, before signing.

**Buyer(s) execution – individual(s)**

SIGNED by the Buyer(s) in the presence of:

Signature of Witness

Name of Witness (print)

Date

*[Handwritten Signature]*

THOMAS CHRISTIE

2/5/2018

*[Handwritten Signature]* as trustee.

Signature of Buyer

*[Handwritten Signature]* as trustee.

Signature of Buyer

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the Contract during the statutory cooling-off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about the Contract and his or her cooling off rights, before signing.

**Buyer(s) execution - company**

SIGNED on behalf of the Buyer in accordance with the Corporations Act by a director and a director/secretary or by a sole director (if applicable) in the presence of:

Signature of Witness

Name of Witness (print)

Date

Signature of Director/Sole Director

Name

Signature of Director/Secretary

Name

**Guarantor(s) execution**

SIGNED by the Guarantor(s) in the presence of:

Signature of Witness

Name of Witness (print)

Date

Signature of Guarantor

Name

Signature of Guarantor

Name

**Seller execution**

SIGNED by the Seller by its attorney under Power of Attorney 717403834:

Date

11/5/18

*[Handwritten Signature]*

Signature of Attorney

MARCUS ROY FORD

Name of Attorney (print)