

# **Joint Venture Contribution Agreement**

*Relating to the Development of Land at*

**60 THE PENINSULA, NOOSAVILLE QLD 4566**

**Schedule**

Date of Agreement:	7 SEPTEMBER 2018	
Contributor <i>Full legal name with A.C.N. if a company.</i> <i>Full name of trustee (and if corporate trustee, the A.C.N.) and trust if a trust</i>	LJ LETHBRIDGE SUPER PTY LTD	
Contributor's address	4 kural crescent fletcher 2287	
Developer <i>Full legal name with A.C.N. if a company.</i> <i>Full name of trustee (and if corporate trustee, the A.C.N.) and trust if a trust</i>	GMELLI DESIGN PTY LTD ATF GMELLI DESIGN TRUST  A.C.N. 625200053	
Developer's address	PO Box 2687, Burleigh Waters QLD 4220	
Land	Address:	60 The Peninsula, Noosaville QLD 4566
	Legal Description:	Lot 291 on RP 856193
Capital Contribution:	\$ 130,000.00	
Return:	25% per annum, fixed	
Estimated Completion Date:	3rd Quarter 2019	

This Joint Venture Contribution Agreement is made on the Date in the Schedule.

**Between**                      The Contributor

**And**                              The Developer

**Background**

- A. The Contributor and Developer have reached agreement relating to the purchase, development, management and sale of the Land.
- B. The Contributor agrees to provide the Capital Contribution to facilitate the Development.
- C. The Developer agrees to purchase the Land, develop and manage the Land and sell the Lots.
- D. The Developer agrees to provide the Contributor the Security.
- E. This Agreement sets out the terms of the agreement between the Contributor and the Developer.

**And It Is Agreed**

**1. Purchase of Land**

- 1.1 The Developer agrees to purchase the Land.
- 1.2 The Developer must purchase the Land in its own name.
- 1.3 After the Land Settlement Date, the Developer must carry out the Development on the Land and manage the Land and the Lots.

**2. Capital Contribution**

- 2.1 The Contributor agrees to provide the Capital Contribution to the Developer.
- 2.2 The Contributor must provide the Capital Contribution to the Bank Account in one payment. Payment can be made either:
  - (a) Directly to the Bank Account; or
  - (b) By authorising the Developer to have funds released from the trust account operated by Confidis and paid directly to a Bank Account.
- 2.3 If the Contributor selects option 2.2(b), it agrees that:
  - (a) The funds provided by its shareholders which make up the Capital Contribution, is provided for the purposes set out in this Agreement;
  - (b) Each shareholder has been informed that:

- (i) the funds transferred by them to Confidis are not Trust Money pursuant to the *Legal Profession Act 2007*;
- (ii) The funds are not subject to any supervision, investigation or audit requirements of the *Legal Profession Act 2007*; and
- (iii) A claim against the fidelity guarantee fund cannot be made in relation to the funds;
- (c) Each shareholder has had the opportunity to obtain their own legal and financial advice that they deem necessary in relation to this Agreement, the Development and the funds;
- (d) A director, secretary, authorised agent or employee of the Developer can authorise the release of the funds at their discretion for the purposes set out in this Agreement; and
- (e) It will have all its shareholders sign any form which contains the substance of this paragraph if required by Confidis.

2.4 The payment in paragraph 2.2 must be made by the Capital Contribution Payment Date.

2.5 Nothing in this paragraph requires the Contributor to make any further contribution beyond payment of the Capital Contribution.

### **3. Use of Capital Contribution**

3.1 The Developer can use the Capital Contribution to fund the purchase of the Land, as well as to pay the Development Costs.

3.2 The Developer has sole discretion as to how to apply the funds to facilitate the Development but must act reasonably.

### **4. Development – Land not identified**

4.1 If at the date of this Agreement, the Land is not identified, the Developer must locate Proposed Land within a reasonable time from the date of this Agreement.

4.2 Once the Proposed Land is located the Developer must advise the Contributor of the Proposed Land.

4.3 The Contributor must agree that the Proposed Land can become the Land as soon as reasonably practical after the Developer notifies it of the Proposed Land and must act reasonably.

4.4 If the Contributor doesn't agree that the Proposed Land can become the Land, the Developer can, at its sole discretion:

- (a) Terminate this Agreement; or
- (b) Locate other Proposed Land, in which case the procedure described above is repeated.

**5. Development – Timing**

- 5.1 The Developer must use its reasonable efforts to complete the Development by the Estimated Completion Date. The Developer is not liable for any Loss by reason of being unable to complete the Development by the Estimated Completion Date.
- 5.2 The Developer is not liable for any Loss by reason of being unable to complete the Development by the Sunset Date however must pay Default Interest.
- 5.3 The Sunset Date is automatically extended if the Developer gives the Contributor a certificate that the Development was delayed because of:
- (a) damage by fire, explosion, earthquake, lightning, storm, war, civil commotion or act of God; or
  - (b) bad or inclement weather; or
  - (c) disputes with neighbours; or
  - (d) delay by an Authority in giving any necessary approval required to lawfully complete the Development; or
  - (e) strikes or industrial disputes; or
  - (f) legal proceedings concerning the Land or Development; or
  - (g) a combination of these or any other causes beyond the Developer's control;

and stating the period of such delay, then the Sunset Date is further extended by the period of the delay stated in the certificate.

**6. Development – Bank Account**

- 6.1 The Developer must open and maintain a Bank Account.
- 6.2 The Developer must ensure that all Development Costs are paid from the Bank Account.
- 6.3 The Developer must ensure that all proceeds from the sale of the Lots are deposited into the Bank Account.

**7. Development - Insurance**

- 7.1 The Developer must obtain and maintain Insurance.
- 7.2 If there is partial loss or destruction of the Land or Lots, the Developer must arrange for the repair and reinstatement of the improvements on the Land or Lots, as soon as reasonably possible after the insurer has accepted the claim.
- 7.3 If there is total loss or destruction of the Land or Lots, then the Developer and Contributor must, within three months from the total loss or destruction, agree to either:
- (a) proceed to rebuild the improvements upon the Land and Lots and complete the Development; or

(b) sell the Land as is.

7.4 If the parties can't agree, the Developer has the sole election as to how to proceed, including to proceed with the Development or terminate this Agreement.

**8. The Development - The Developer's obligations**

8.1 The Developer agrees to manage and complete the Development and sell the Lots. Without limiting the generality of that statement, the Developer must:

- (a) If paragraph 4 applies, identify Proposed Land;
- (b) negotiate the terms for purchase of the Land on usual terms for development land;
- (c) complete the purchase of the Land, including with the help of professionals such as real estate agents and solicitors;
- (d) engage professionals needed for the Development, including a solicitor, town planner, accountant, engineer, draftsman, architect, project manager and real estate and marketing agents;
- (e) prepare or arrange preparations of plans, obtain approvals, arrange quotations and arrange for the carrying out of the Works;
- (f) ensure that as far as practical, the Works are done by properly qualified and certified tradespersons and professionals and in a good and workmanlike manner;
- (g) arrange for the management, repair and maintenance of the Land and Lots as required;
- (h) pay when due, but not fund, the Development Costs;
- (i) comply with all laws relating to the Development;
- (j) comply with all directions and requirements of any Authority or Financer;
- (k) promptly give notice to the Contributor after all the Lots are created;
- (l) arrange for the marketing and sale of the Lots, including with the help of professionals, such as agent and solicitors; and
- (m) keep Development Records.

8.2 Despite paragraph 8.1, the Developer is not required to carry out the business of being a real estate agent.

8.3 The Developer must carry out its obligations promptly and expeditiously.

8.4 The Developer's obligations can have its obligations performed by itself, its employees, agents, contractors or professionals engaged by it.

**9. Developer's obligation - Information**

9.1 The Developer must, when reasonably required:

- (a) provide evidence of Insurance to the Contributor;
- (b) provide the Development Records to the Contributor;
- (c) arrange the Financial Accounts;
- (d) provide the Financial Accounts to the Contributor;
- (e) provide the Finance Documents to the Contributor;
- (f) provide explanations of the Development Records, Financial Accounts and Finance Documents to the Contributor; and
- (g) keep the Contributor informed about the Development generally, including any sales of the Lots.

9.2 The Developer agrees to meet regularly, but at least quarterly, with the Contributor to discuss the Development.

9.3 The Contributor agrees that the information required by this paragraph is satisfactory if the Developer provides copies of raw documents. *For example, copies of loan statements for Finance, tax invoices and/or receipts and Bank Account statements.*

9.4 The Contributor agrees that the information required to be provided by the Developer can be provided in an electronic medium. *For example, Slack.*

## **10. Mutual obligations**

10.1 The Developer and Contributor must each:

- (a) use their best endeavours to promote the best interest of the Development;
- (b) be just and faithful to each other; and
- (c) do all things and sign all documents necessary or desirable to give full effect to this Agreement even if not specifically provided for.

## **11. Developer prohibitions**

11.1 The Developer must not:

- (a) incur any liabilities relating to the Development other than in the ordinary course of business conducted in a normal and proper manner;
- (b) lend any money to any person other than in the ordinary course of business conducted in a normal and proper manner;
- (c) apart from to a Financer or Contributor, guarantee or give security for any person or over the Land or Lots,
- (d) do or knowingly suffer to be done anything where the Land or Lots may cause a significant decrease in value; or

- (e) be a party to the doing of any act, matter or thing where the goodwill reputation or overall public image of the Development may be negatively affected.

## **12. Security**

- 12.1 The Developer must, within 14 days from the date of this Agreement, provide the validly signed Security to the Contributor. Once the Land becomes the Lots the Developer must, if requested by the Contributor, provide validly signed Security over the Lots to the Contributor.
- 12.2 The Security must be held by the Contributor in escrow and can only be released from escrow if the Developer Defaults under this Agreement. If released from escrow, the Security can be registered over the Land or Lots however the Contributor must enter into any agreement reasonably required by a Financer. *For example, Deeds of Priority in a form required by the Financer.*
- 12.3 If the escrow is released and the Security is registered, the Contributor must provide releases of the security to allow the Land or Lots to be sold, provided that paragraph 14.1 is complied with. In no circumstance, including and despite registration of the Security, will the Contributor be deemed to be a Financer for the purposes of paragraph 15.1(b).
- 12.4 The Developer must, promptly upon demand by the Contributor, sign any other documents and do any other reasonable thing reasonably required by the Contributor to give effect to the Security.
- 12.5 The Contributor agrees that it has no caveatable interest in the Land or Lots.

## **13. Finance**

- 13.1 After settlement of the Land, the Developer is entitled to obtain Finance or refinance and provide a mortgage with higher priority than the Security, over the Land or Lots to any Financer.

## **14. Sale of Lots**

- 14.1 The Developer must use its reasonable endeavours to promptly sell and settle the Lots.
- 14.2 The Developer must not sell or otherwise dispose of a Lot for less than its fair market value.
- 14.3 The Developer can sell or otherwise dispose of the Lots to a Related Entity provided paragraph 14.2 is complied with.
- 14.4 The Developer is not liable for any Loss by reason of being unable to sell the Lots by the Sunset Date.

## **15. Repayment**

- 15.1 From the proceeds of the sale of the Land or Lots, the Developer must apply the proceeds in the following order:
  - (a) Firstly, to the costs of sale of the Land or Lot, such as commission and legal fees;
  - (b) Secondly, to the Financer;
  - (c) Thirdly, to pay the Development Costs; then



(d) Fourthly, to repay the Capital Contribution.

15.2 The Capital Contribution must be repaid as soon as reasonably practicable.

**16. Return on Investment and Interest**

16.1 After the repayments set out in paragraph 15 have been made, the Developer must pay the Contributor the Return.

16.2 The Developer must pay the Return to the Contributor as soon as reasonably practical after the sale of the last of the Lots.

16.3 The Developer can repay the Capital Contribution and Return at any time.

16.4 If the Developer is in Default it must pay Default Interest.

16.5 In this Agreement, the return means the amount determined in accordance with the following formula:

$$((\text{Capital Contribution} \times \text{Return}) / 365) \times \text{Term} = \text{return}$$

Where:

Capital Contribution has the meaning in paragraph 34.1(d);

Return is the percentage rate noted in the Schedule;

Term is the number of days between the Start Date and the End Date; and:

- Start Date means the earlier of the date the Capital Contribution is used by the Developer to pay for the Land or the Development Costs; and
- End Date means the settlement date of the last Lot to sell

*For example, if Capital Contribution is \$1 million, the Return 18%, the Start Date 1 January and the End Date 31 December the next year (730 days), the return would be \$360,000*

**17. Developer Default**

17.1 If the Developer is in Default, the Contributor may release the Security from escrow.

**18. Contributor Default**

18.1 If the Contributor is in Default, the Developer may do any one or more of the following things:

- (a) terminate this Agreement;
- (b) enforce the terms of this Agreement;
- (c) exercise any rights which are given to the other Party under this Agreement, by law, equity or otherwise;
- (d) do anything to remedy the event of default at the cost of the Party in default; and
- (e) reduce the Return to one half of what is specified.

## **19. Termination**

19.1 This Agreement will continue until the earlier of the following events occur:

- (a) no Land is purchased by the Sunset Date and one party gives the other seven days' notice it wishes to terminate this Agreement;
- (b) The Developer elects to terminate this Agreement as permitted by this Agreement;
- (c) all the Lots are settled and paragraph 15 has been complied with;
- (d) the Developer repays the Capital Contribution and Return; or
- (e) the parties mutually agree to terminate this Agreement.

## **20. No representations or warranties**

20.1 The Contributor agrees that the Developer has not made and will not make any representations or warranties about:

- (a) the current value of the Land;
- (b) the likely amount of the Development Costs;
- (c) the expected value of the Lots; or
- (d) the Development generally.

20.2 Both parties accept the inherent risks associated with the real estate investment and development, and accept the risks associated with this.

## **21. Dispute**

21.1 If the parties are in dispute about the meaning or interpretation of any provision of this Agreement the parties must mediate their dispute.

## **22. Confidentiality**

22.1 All Information must be treated as confidential by that party and must not be divulged by that party in whole or in part to third persons without the prior written consent of the other party, except:

- (a) a party may divulge the information to a Related Entity, any Financer or shareholder;
- (b) to the extent necessary to ensure the efficient operation of this Agreement; or
- (c) to the extent required to be disclosed by the law applicable to that party or by any Authority; or
- (d) to the extent that the Information or data lawfully is or becomes within the public domain; or

- (e) when it is reasonably required for the purposes of any professional, adviser, consultant, expert, contractor or subcontractor employed or retained by the party.

22.2 Each party must take all steps reasonably necessary to ensure that the Information is made known only to those persons that reasonably require its knowledge in the course of their duties. Despite this clause each party must, to the extent permitted by law, require any person to whom it intends to disclose the Information and who is not otherwise under a legal, professional or contractual duty to keep the Information confidential, give a written undertaking to all parties to this contract to deal with the Information in accordance with this paragraph.

### **23. Indemnity**

23.1 Despite anything else in this Agreement the parties indemnify and agree to keep indemnified each other from and against all Claims.

### **24. Trust**

24.1 If any party enters into the Agreement as a trustee of a Trust ("the Trustee"), then, whether or not the other party has any notice, including actual or constructive notice, this paragraph 24 applies.

24.2 The Trustee warrants that it:

- (a) has full power under the Trust to enter into and perform the obligations in this Agreement;
- (b) is the sole trustee of the Trust;
- (c) enters into this Agreement for the sole benefit of the beneficiaries of the Trust; and
- (d) it has taken all steps necessary to entitle it to be indemnified from the assets of the Trust against any liability undertaken under this Agreement.

24.3 The Trustee agrees that its obligations and liabilities arising or created by this Agreement extend to all interests in the Trust and any other assets of the Trust.

24.4 The Trustee must, on written demand or direction of the other party, exercise all rights of indemnity that the Trustee may at any time have against the Trust and any beneficiaries or unit holders of the Trust, or any of the same for the benefit of the other party.

24.5 The Trustee is liable under this Agreement both in its personal capacity and as a trustee of the Trust.

24.6 The Trustee must produce to the other party the original or a certified copy of the stamped Trust Deed and all other documents evidencing the Trust within 14 days of written request by the other party.

24.7 The Trustee must not without the prior written consent of the other party:

- (a) resign as trustee or appoint a new or additional trustee;
- (b) make any advancement or distribution of capital of the Trust; or
- (c) consent to changing the terms of the Trust.

24.8 The Trustee must immediately advise the other party if it is removed as trustee of the Trust.

**25. Costs**

25.1 The Contributor must pay its own costs of and incidental to this Agreement.

25.2 The Developer's costs of and incidental to this Agreement are a Development Cost.

25.3 Any transfer duty relating to the Land or Lots is a Development Cost.

**26. No assignment**

26.1 A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of each other party.

**27. Authority**

27.1 Each person signing this Agreement:

- (a) As attorney for any party warrants to the other parties that at the date of execution he or she has not received any notice of the revocation of the power of attorney; and
- (b) As an authorized officer, agent or trustee of any party warrants to the other parties that at the date of execution he or she has full authority to execute this Agreement in that capacity.

**28. Authority to date and complete**

28.1 Each party now authorizes the other and their respective solicitors to:

- (a) date or complete any blank spaces in this Agreement; and
- (b) complete and sign any documents or paper writing as is necessary to stamp or register this Agreement (as required).

**29. Notice**

29.1 Any notice or document required to be given under this Agreement may be given by one party or that party's solicitors to the other party or that other party's solicitors.

29.2 Any notice can be:

- (a) delivered;
- (b) forwarded by pre-paid post to the address in this Agreement (or any other address which may have been notified in writing for that purpose), and it will be treated as given three Business Days after posting; or
- (c) emailed to an email address in this Agreement (or any other email address which may have been notified in writing for that purpose), and it will be treated as given when the sender's email system says it has been sent and delivered; or
- (d) delivered in the manner set out in s347 of the *Property Law Act 1974*.

29.3 Any notice given by a party's solicitors is deemed to be given with the authority of that party.

29.4 Any notice must be in writing and in English.

**30. Entire Agreement**

30.1 This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and replaces any representations, negotiations or discussions that may have taken place before signing it.

30.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

**31. Electronic Transactions Act (Qld) 2001 and Counterparts**

31.1 The parties agree that prior to entering into this Agreement that they agreed:

- (a) to communicate, transact and exchange documents by electronic means under the *Electronic Transactions Act (Qld) 2001*;
- (b) a copy of this Agreement signed by any party transmitted electronically to any other party will have the same effect as if it were an original document handed to the other party;
- (c) further original copies of this document may be signed at a later date but if they are, they will not affect the effect of any relevant copy of this Agreement transmitted electronically by any party to any other party;
- (d) the parties expressly consent:
  - (i) for all information required to be given in writing to them;
  - (ii) for all information permitted to be given to them in writing;
  - (iii) for all signatures required to be given by them;
  - (iv) all documents to be produced by or to them;
  - (v) in respect of this Agreement, can be given or produced by electronic communication including by email;
- (e) despite 31.1(d), notices that are to be given under the terms of this Agreement once it becomes evidence of a binding agreement between the parties can be given in accordance with the other provisions of this Agreement; and
- (f) this document can be signed in a number of counterparts (whether transmitted to the other party electronically or not), which together will be taken as evidence of one instrument.

**32. General Provisions**

32.1 The parties agree that any illegal or unenforceable provision will be severed from this Agreement and:

- (a) will not affect the continued operation of the remaining provisions;
- (b) will be deemed never to have been part of this Agreement, unless it can read down so as to give it a valid and enforceable operation of a partial nature, and if so, it must be read down to the minimum extent necessary to achieve that result;
- (c) the remainder of this Agreement will subsist and remain in full force and effect unless the basic purposes of it would be defeated; and
- (d) the parties agree to use their best endeavours to replace any severed provision.

32.2 The law in force in the State of Queensland governs this Agreement. The parties agree to submit to the jurisdiction of the Courts in the State of Queensland.

32.3 Unless required by law, statutes, proclamations, orders or regulations do not abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect the exercise or enjoyment of any rights, powers, privileges, remedies or discretions given or accruing to any party to this Agreement.

32.4 Each party must, promptly and at its own cost, do all things, including procure every other person as required, to sign and execute all such further documents and otherwise do all such things as may be necessary or desirable to give full force and effect to this Agreement.

32.5 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

32.6 Time is of the essence of this Agreement.

### **33. Interpretation**

33.1 The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a person includes a Body Corporate;
- (d) a reference to any party to this Agreement includes the parties successors and substitutes, permitted assigns, legal representatives, executors and administrators;
- (e) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (f) a reference to "writing" includes a facsimile transmission or email and any means of reproducing words in a tangible and permanently visible form;
- (g) a reference to a right or obligation of any two or more persons, confers that right or imposes that obligation jointly and severally;
- (h) if a party consists of more than one person or entity, each person or entity is bound jointly and severally;

- (i) “Do” includes do, permit or omit, or cause to be done or omitted; and
- (j) “including” and similar expressions are not words of limitation.

- 33.2 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 33.3 A reference to a paragraph, schedule, annexure or appendix is a reference to a paragraph or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix.
- 33.4 A reference to legislation includes its regulations and any amendments, consolidations or replacements.
- 33.5 If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day. All references to dates and times are to Queensland time. If anything is required to be done on a day that is not a Business Day, it must instead be done on the next Business Day.
- 33.6 Headings are for convenience only and do not affect interpretation of this Agreement.
- 33.7 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement. Each party confirms that they have had the opportunity to obtain their own advice about the terms of this Agreement.
- 33.8 If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.
- 33.9 The parties agree to apply a construction to each provision of this Agreement in order that it creates a legal and enforceable provision. All references to “\$” and “dollars” are to the lawful currency of Australia.
- 33.10 Recitals to this Agreement are to be read as and form part of this Agreement.
- 33.11 This Agreement binds the party’s successors, executors, administrators, or permitted assigns.
- 33.12 This Agreement does not constitute a partnership or joint venture and neither of the parties has any authority to bind the other any way except as provided in this Agreement.

#### **34. Definitions**

- 34.1 In this Agreement the following terms have the following meanings unless the context otherwise requires:
- (a) “Authority” means any federal, state or local government, semi-government body, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency, consent body (including a private certifier), financier or other third party which can make a decision and which relates to the Land, the Development or the Lots;
  - (b) “Bank Account” means a bank account opened with a reputable bank selected by the Developer and opened in the Developer’s name;

- (c) "Business Day" means a day other than:
  - (i) A Saturday or Sunday;
  - (ii) A public holiday in Queensland; and
  - (iii) A day in the period from 27 to 31 December (inclusive);
- (d) "Capital Contribution" means the amount in the schedule;
- (e) "Capital Contribution Payment Date" means the date which is 14 days from the date of this Agreement;
- (f) "Claim" includes any actions, debt, cause of action, Liability, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise which relates to the Development
- (g) "Confidis" means Confidis Pty Ltd or company offering a similar service;
- (h) "Contributor" has the meaning given to it in the Schedule;
- (i) "Corporations Act" means the *Corporations Act 2001* (Cth);
- (j) "Default" means:
  - (i) breaching any of its obligations under this Agreement and fails to remedy that breach within 30 days of the other Party giving written notice of the breach;
  - (ii) has a receiver, receiver and manager, liquidator, provisional liquidator or administrator appointed in respect of it or an application or order is made for the winding up of the party;
  - (iii) a judgment of over \$25,000 is entered against the party and is not satisfied within the time required under that judgment;
  - (iv) if a Security becomes enforceable according to its terms, whether actually enforced or not.
- (k) "Default Interest" means 2% above the interest rate charged to borrowers by the bank which the Developer has the Bank Account with, for loans of over \$100,000, calculated annually, from the date of Default until paid;
- (l) "Developer" has the meaning given to it in the Schedule;
- (m) "Development" means the development of the Land to create the Lots;
- (n) "Development Costs" means any and all costs relating to the Development as determined by the Developer acting reasonably, and including but not limited to:
  - (i) Finalisation Costs;
  - (ii) all costs associated with finding the Land to allow it to be purchased;



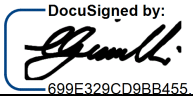
- (iii) all cost associated with any due diligence enquiries made by the Developer relating to the Land including but not limited to costs associated with investigations and enquiries concerning town planning, fire safety, environment or health enquiries, survey report and approvals certificates, for completion of the purchase of the Land;
- (iv) the purchase of the Land, including paying the deposit and balance purchase price;
- (v) all expenses relating to the purchase of the Land including but not limited to transfer/stamp duty, searches, legal costs and disbursements,
- (vi) all holding costs relating to the Land including but not limited to:
  - (1) rates, service charges (such as sewerage or water), taxes (including land tax) and levies; and
  - (2) Insurance premiums and excesses (if required) to obtain replacement and public liability insurance;
- (vii) Any taxes relating to the Development or Land, including but not limited to GST;
- (viii) all ongoing costs relating to the Land;
- (ix) Finance Costs;
- (x) costs related to the Works;
- (xi) advertising and marketing costs, agent's commission, sale fees and associated costs and expenses to obtain tenants or buyers of the Land or Lots;
- (xii) all costs relating to Insurance including premiums and excesses, or costs to pursue any claim under the Insurance;
- (xiii) the legal costs of enforcement of any contract with the Land or Lots, or the defence of any claim made relating to the Land or Lots;
- (xiv) costs incurred by the Developer relating to this Agreement including but not limited to any transfer duty on this Agreement as set out in paragraph 25.2 and the costs set out in paragraph 25.3;
- (xv) costs relating to the Security, including registration removal costs; and
- (xvi) any other costs and expenses which reasonably relate to the Development specifically including, without limitation, any costs from a Related Entity to the Developer;
- (o) "Development Records" include all information reasonably related to the Development included but not limited to:
  - (i) information about the Development Costs;
  - (ii) the contract for purchase of the Land, as well as documents relating to the purchase such as the settlement statement;

- (iii) the contracts for the sale of the Land or Lots, as well as documents relating to the sale such as the settlement statements;
- (iv) development approvals from any Authority; and
- (v) all other documentation in relation to the Development that it has in its care, possession or control;
- (p) "Estimated Completion Date" has the meaning given to it in the Schedule;
- (q) "Finalisation Costs" means the costs reasonably incurred or expected to be incurred by the Developer after the last of the Lots is sold, including costs to wind-up the Developer and obtain final Financial Accounts;
- (r) "Finance" means to obtain further funds which, in the Developer's reasonable opinion, are required to complete the Development;
- (s) "Finance Costs" means all costs relating to Finance including but not limited to costs to obtain Finance, payments of principal, interest and loan expenses, all fees and expenses associated with the Developer obtaining Finance or refinancing as well as Default Interest;
- (t) "Finance Documents" means documents between the Developer and Financer relating to the Development;
- (u) "Financer" means a party or parties providing Finance to the Developer for the Development such as a bank or private lender;
- (v) "Financial Accounts" means financial accounts usually prepared for Developments, which must contain sufficient details and particulars as is reasonably necessary to give a full understanding of the financial position, prepared by an accountant nominated by the Developer;
- (w) "Information" means all information and data acquired by a party in relation to this Agreement or any dealing arising out of this Agreement;
- (x) "Insurance" means insurance for the Land, Development and Lots with cover for replacement value of the improvements on the Land or Lots, as well as public liability cover of at least \$20 million;
- (y) "Land" means subject to paragraph 4, the land described in the Schedule;
- (z) "Lots" means the lots created from the subdivision of the Land, after a separate title for each of the lots is created in the Land Titles Register;
- (aa) "Liability" means any liability, whether actual, contingent or prospective, including for any Loss irrespective of when the acts, events or things giving rise to the liability incurred but excluding liability for any consequential or indirect losses, economic losses or loss of profits;
- (bb) "Loss" means all damage, loss, cost and expense, including legal costs and expenses of whatsoever nature or description;
- (cc) "Proposed Land" means land which is suitable for purchase and development;

- (dd) "Related Entity" has the meaning given to it in the Corporations Act and includes any other entity which has as a director, a director of the Developer;
- (ee) "Return" means the interest rate in the schedule;
- (ff) "Sunset Date" means, subject to paragraph 5.3, five years from the Date of this Agreement;
- (gg) "Security" means a mortgage ranked behind the Financer, over the Land and/or Lots on usual commercial terms, to be unregistered until the escrow in paragraph 12.2 is released;
- (hh) "Schedule" means the part of this Agreement headed as the schedule;
- (ii) "Trust" means any trust any party is a trustee of; and

- (jj) “Works” means the civil and construction works required on the Land to complete the Development, including but not limited to building and earth works, other works relating to the alteration, improvement, demolition, excavation, or repair of the Land, to create the Lots.

Executed as an Agreement by the Developer:

DocuSigned by:  
  
699E329CD9BB455...

Signature of authorised person

**Director/Sole Director**

Office held

TRENT GIUMELLI

Name of authorised person

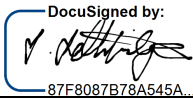
Signature of authorised person

**Director/Secretary**

Office held

Name of authorised person

Executed as an Agreement by the Contributor:

DocuSigned by:  
  
87F8087B78A545A...

Signature of authorised person

**Director/Sole Director**

Office held

Luke Lethbridge

Name of authorised person

Signature of authorised person

**Director/Secretary**

Office held

Name of authorised person