

Contents

| | |
|---|----|
| Background..... | 3 |
| Operative provisions..... | 3 |
| Definitions and interpretation..... | 3 |
| 2. Project..... | 6 |
| 3. Term of Agreement..... | 7 |
| 4. Participating Interests and rights of Participants..... | 8 |
| 5. Contributions..... | 8 |
| 6. Development Company's appointment and role..... | 9 |
| 7. Project funding..... | 10 |
| 8. Project Account..... | 11 |
| 9. Distribution of Profit/Payment of Losses..... | 12 |
| 10. Default..... | 13 |
| 11. Dispute resolution..... | 14 |
| 12. GST..... | 15 |
| 13. Notices..... | 15 |
| 14. Confidentiality..... | 16 |
| 15. Assignment..... | 16 |
| 16. General..... | 17 |
| 17. Guarantees..... | 18 |
| Schedule 1 – The Participants..... | 19 |
| Schedule 2 – Participating Interest and Contributions..... | 20 |
| Schedule 3 – Contributions Payment Date..... | 20 |
| Schedule 4 – Name of Project..... | 20 |
| Schedule 5 – Site..... | 20 |
| Schedule 6 – Financier's Loan..... | 20 |
| Schedule 7 – Project Services Agreement..... | 21 |
| Schedule 8 – Management Committee, Meetings and Voting..... | 22 |
| Schedule 9 – The Guarantors..... | 23 |
| Schedule 10 – Deed of Indemnity..... | 25 |
| Schedule 11 - Acknowledgment and Disclosure..... | 26 |
| Execution..... | 27 |

This deed is made on the _____ day of _____ 2021

Between **Lot 19 Prosperity Pty Ltd ACN 649 416 053** of Unit 7, 62 Westacott Street, Nundah QLD 4012
(Development Company)

And **The persons whose names and addresses are set out in Schedule 1**
(Participants)

And **The persons whose names and addresses are set out in Schedule 9**
(Guarantors)

Background

- A. The Participants wish to undertake a project involving the acquisition of vacant land its development for industrial related purposes and sale.
- B. The Development Company is to act as agent for the Participants to acquire the Site and generally to do all things necessary to implement and carry out the objectives of this Agreement and give effect to its terms, on behalf of the Participants.
- C. The Participants have agreed to participate in the Project and wish to record the terms of their agreement.

Operative provisions

Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

Agreement means this deed.

Agreement Date means the date specified at the top of page 3 of this Agreement.

Approvals has the meaning assigned to this definition in the Project Services Agreement.

Authority has the meaning assigned to this definition in the Project Services Agreement.

Budget has the meaning assigned to this definition in the Project Services Agreement.

Building has the meaning assigned to this definition in the Project Services Agreement.

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

Contract means the contract to be entered into by the Development Company to purchase the Land for a purchase price of \$1,142,400.00 (plus GST).

Contributions means the initial financial contribution to be made by each of the Participants pursuant to clause 5.1, as specified in Schedule 2.

Contributions Payment Date means the date specified in Schedule 3.

Deed of Indemnity means a deed in or substantially in the form attached as Schedule 10.

Default Rate means 15% per annum.

Development means the development of the Land by construction of a Building, in accordance with the Approvals.

Event of Default means:

- (a) failure by a Participant to pay the initial Contribution by the due date for payment;
- (b) failure by a Participant to pay any subsequent called sum by the due date (as specified by the Development Company under clause 5.4) and where that failure continues for a period of 7 days after receiving written notice of it from the Development Company;
- (c) the default by a Participant in the performance of any other material obligation under this Agreement and where such default continues for a period of 14 days after receiving written notice of it from the Development Company;
- (d) the entry by any Participant into liquidation, voluntary or otherwise (except for the purpose of reconstruction or amalgamation) or the appointment of an administrator or a receiver and manager or receiver or manager to any part of its assets or undertaking; and
- (e) where a Participant is a natural person the Participant authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes to enter into a deed of assignment or a deed of arrangement or a composition with any of his or her creditors or commits an act of bankruptcy.

Financier means the financial institution which provides the Financier's Loan.

Financier's Loan means the financial accommodation to be obtained from the Financier for the purpose of the Project. The indicative amount of borrowings is specified in Schedule 6.

GST means a tax, levy, duty, charge or deduction together with any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Law.

GST Law has the same meaning as it is given to that term in the A New Tax System (Goods and Services Tax) Act 1999.

Gross Income means all money received by the Development Company or a Participant from all sources in respect of the Project including:

- (a) rental income received from leasing activities; and
- (b) purchase moneys received and arising out of a sale of the Site or any part of the Site.

Institute means the Australian Property Institute Inc, (Qld Division) or its successor.

Land means the land referred to and described in Schedule 5.

Management Committee means the management committee for the Project who is appointed and operates in accordance with the terms of reference in Schedule 8 (Committee Rules).

Net Profit means the amount (if any) by which the Gross Income exceeds the Project Costs.

Participating Interest means in respect of each Participant its undivided share proportional to the contribution made by the Participants to the Project, expressed as a percentage in Schedule 2.

Project means to undertake the Development, lease the Site, sell the Site and distribute the proceeds in accordance with this Agreement.

Project Account means the bank accounts to be maintained under clause 8.

Project Costs means the total of all expenditure of whatever description properly incurred, paid, payable or due, arising out of or in connection with the carrying out of the Project, including:

- (a) all money paid to purchase the Land;
- (b) the costs incurred in purchasing the Land;
- (c) the costs incurred in developing the Land;
- (d) fees and charges (other than the Project Success Fee) payable under the Project Services Agreement;
- (e) all establishment fees, stamp duty, legal costs and other incidental costs in connection with the Financier's Loan;
- (f) all interest and other costs incurred in respect of the Financier's Loan;
- (g) all costs incurred in leasing and/or selling the Site including advertising charges, commissions and other incidental costs;
- (h) other items identified in the Budget,

but does not include,

- (i) costs incurred by the Participants in funding their respective Contributions or any called sum under clause 5.4; and
- (j) income tax payable by a party on any moneys paid to them under this Agreement.

Project Services Agreement means the agreement in the form of agreement attached to Schedule 7.

Site means the Land (including improvements constructed on the Land).

Related Entity means any corporation or person which would be deemed to be related to one of the parties pursuant to the provisions of the *Corporations Act 2001*.

Valuer means a valuer:

- (a) independent of the parties;

- (b) who has at least 10 years' experience in industrial property in South East Queensland;
- (c) who is a practicing member of the Institute; and
- (d) who acts in determining a valuation as an expert and not as an arbitrator.

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to one gender includes each other gender;
- (d) a reference to the singular includes the plural and the plural includes the singular;
- (e) the word **"person"** includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (g) a reference to all parties, clauses, schedules or annexures is, unless otherwise provided, to the parties for the time being to this Agreement and to the clauses, schedules or annexures of or to this Agreement;
- (h) a reference to **"\$"** and **"dollars"** is to the lawful currency of Australia;
- (i) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (j) a party which is a trustee is bound both personally and in its capacity as trustee;
- (k) **"including"** and similar expressions are not words of limitation; and
- (l) headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.3 Adverse construction

This Agreement may not be construed adversely to a party just because that party prepared this Agreement.

2. Project

2.1 Establishment

The Participants associate together to implement and carry out the Project in accordance with the provisions of this Agreement.

2.2 Aims

The aims of the Project are:

- (a) to acquire the Land by completing the Contract;

- (b) to carry out the Development;
- (c) to lease the Site;
- (d) to sell the Site; and
- (e) to derive Net Profit and distribute it in the manner provided for in this Agreement, at the earliest possible date.

2.3 Mutual covenants

Each Participant will act in good faith towards the others and must:

- (a) observe and perform its respective obligations and commitments in respect of this Agreement;
- (b) not do or cause or permit to be done any act, matter or thing where in any way a breach of this Agreement occurs;
- (c) take all necessary steps on its part to give full effect to the provisions of this Agreement;
- (d) be just and faithful in the activities and dealings with each other but nothing in this Agreement prevents or restricts a Participant at any time and without notice to or consent of the other Participants from entering into or continuing any business whether or not in competition with the activities of any other Participant or the Joint Venture including acquisition of real estate and its development.

2.4 No partnership, etc

Nothing contained in this Agreement will be construed to constitute any Participant a partner, agent or representative of any other Participant or to create any trust or commercial or other partnership for any purposes whatsoever.

2.5 Several liability

The rights and obligations of the Participants under this Agreement will, except where expressly stated to the contrary in this Agreement, be several to the extent of their respective Participating Interests from time to time and not joint nor joint and several.

2.6 No implied agency

No Participant will have any authority to act for or to assume any obligation or responsibility on behalf of any other Participant or to pledge the credit of any other Participant except as otherwise expressly provided in this Agreement or by other express agreement between the Participants.

3. Term of Agreement

3.1 Term

This Agreement commences on the Agreement Date and will continue until the completion of the Project and for so long after completion as is necessary in order to properly complete the winding up of the Project.

3.2 Accrued obligations

Despite any termination of this Agreement, the Participants will continue to be severally liable in the proportions of the respective Participating Interests at the date of such termination for any obligations under this Agreement then accrued and outstanding until the same are discharged in full.

4. Participating Interests and rights of Participants

4.1 Initial interests

The initial Participating Interests of the Participants are specified in Schedule 2.

4.2 Profit and losses

The costs, profits and losses of the Project will, subject to the other terms of this Agreement be shared by the Participants in the proportions of their respective Participating Interests.

4.3 Indemnities against breach

Except as otherwise expressly agreed between the Participants, each Participant will indemnify the other Participants and keep such other Participants always indemnified in respect of all loss or damage which such other Participants may suffer or incur in respect of or arising directly or indirectly out of any breach or failure or default by the first-mentioned Participant or a Related Entity with that first-mentioned Participant in the performance of any of its obligations under this Agreement.

4.4 Indemnities against liability

Except as otherwise expressly agreed between the Participants, if at any time a Participant incurs a liability for the purpose of the Project to an extent greater than its obligations by reason of its Participating Interests then the other Participants will indemnify and immediately upon request pay the first-mentioned Participant and keep that first-mentioned Participant always indemnified such that all Participants share such liability in the proportions of their respective Participating Interests.

5. Contributions

5.1 Payment

Each Participant must pay its Contribution in cash into the Project Account on or before the Contributions Payment Date.

5.2 Apportionment

Subject to clause 7.2, the Contributions will be applied towards the Project in the manner determined by the Development Company.

5.3 Additional Contributions

Where the cost of completing the Project exceeds the Project Costs as estimated in the Budget, and the excess is unable to be borrowed on reasonable terms and conditions as determined by the Management Committee, the Participants must provide the additional monies by way of cash in proportion to their Participating Interests within 10 Business Days of receiving notice through the Development Company under clause 5.4 (**Calls**).

5.4 Calls

If clause 5.3 applies:

- (a) the Development Company will call on each Participant to pay to the Project Account funds necessary to meet any Project Costs;
- (b) Any call will be by notice in writing and will specify the amount (**called sum**) which each Participant is required to furnish and the due date for payment (**due date**) not being less than 10 Business Days from the giving of notice.

- (c) Each Participant must pay its called sum to the Project Account by the due date without any deduction or set-off.

5.5 Interest and repayment

Unless otherwise agreed by the Participants, the Contributions will:

- (a) not bear interest; and
- (b) only be repayable in accordance with this Agreement.

6. Development Company's appointment and role

6.1 Appointment to purchase Site

The Participants appoint the Development Company:

- (a) to execute the Contract to purchase the Land in accordance with the terms of the Contract; and
- (b) to hold the Land,

as agent for the Participants in the proportions of the Participating Interests and the Development Company accepts the appointment under this clause 6.1.

6.2 Appointment generally

The Participants also appoint the Development Company as agent for the Participants to:

- (a) enter into the Project Services Agreement;
- (b) enter into a building contract, or other contracts and agreements which relate to development of the Site;
- (c) borrow money from the Financier to secure the Financier's Loan and for that purpose to enter into loan contracts and give security over the Site for the payment of moneys borrowed;
- (d) apply for all Approvals;
- (e) exercise the rights and discharge the obligations on the part of the Participants under the agreements entered into with third parties; and
- (f) sign contracts, agreements, consents, applications and other like documents for the purpose of giving effect to the appointment,

and the Development Company accepts the appointment under this clause 6.2.

6.3 Management Committee (Terms of Reference)

The Participants are responsible for exercising supervision and control over the Project through the Management Committee who will be responsible for:

- (a) making determinations in relation to matters and direction for the day to day operation of the Project;
- (b) making any decisions and providing any approvals which may be necessary for the day to day operation of the Project;
- (c) (through the Development Company) lodging any development and building applications which are needed to carry out the Project;

- (d) appointing any professional whose services are needed to carry out the Project (e.g. consultants under the Project Services Agreement, lawyer, accountant, architect, town planner, surveyor, tenancy manager, or any other expert);
- (e) following the recommendations and advice given by any consultants under the Project Services Agreement (when it is both reasonable and practical to do so);
- (f) following the recommendations and advice of any other professional who is appointed by the Management Committee (when it is both reasonable and practical to do so)
- (g) in consultation with the consultants under the Project Services Agreement, developing and approving the Budget and any related expenditure for the Project (or any variation to the Budget or expenditure as the case may be);
- (h) approving the terms under which the Property will be offered for lease and/or sale;
- (i) advising the Development Company of any decisions made by the Management Committee under this Agreement;
- (j) approving the commencement or defending of any action or proceeding in relation to the Project;
- (k) without limitation to any other matters, events or matters which are generally understood to be within the ambit of prudent management and administration of Projects of this kind.

6.4 Indemnity

Except to the extent that the Development Company is grossly negligent or acts recklessly or fraudulently, the Participants indemnify and keep indemnified the Development Company, its officers, employees, agents against all losses, liabilities of whatever nature (including those under the contracts and agreements referred to in Clauses 6.1 and 6.2) suffered or incurred by, sustained or threatened against the Development Company (including interest and legal fees and expenses reasonably incurred) arising out of the Development Company's performance of the agency appointment under this Agreement.

6.5 Proper exercise of rights

No Participant either by itself or its nominee will exercise rights or powers as a shareholder or permit any person put forward by it as a director of the Development Company to exercise his or her powers in a manner inconsistent with the provisions of this Agreement or anything done or decided pursuant to it.

7. Project funding

7.1 Funding

The Project will be financed and the Project Costs will be paid by:

- (a) the Contributions; and
- (b) the Financier's Loan.

7.2 Application

The Contributions will be used and applied in the following manner:

- (a) firstly by repaying any moneys (if any) incurred by a person on behalf of the Project towards the Purchase Price for the Land or any other items of expenditure which constitute a Project Cost;
- (b) secondly by paying the purchase price (or any unpaid part) under the Contract so as to enable the Development Company to complete the Contract;
- (c) thirdly in payment of other Project Costs when required.

7.3 Financier's Loan

- (a) The Participants authorise the Development Company to source a Financier to provide the Financier's Loan and for this purpose will in its own name make application for the Financier's Loan;
- (b) The Site will be made available as first mortgage security for the Financier's Loan on the terms and conditions of the Financier's Loan;
- (c) The Development Company (as directed by the Participants) may increase or decrease in the amount of the Financier's Loan but will only decrease the Financier's Loan where the Project has generated sufficient income to justify a reduction in borrowings.
- (d) If the Financier, as a condition of Financier's Loan, requires the directors of the Development Company to execute a guarantee and indemnity in favour of the Financier, as additional security for the Financier's Loan, then (but not otherwise) the guarantors must on request of the Development Company promptly sign and deliver to the Development Company a Deed of Indemnity.
- (e) The Deed of Indemnity will be completed with the name of the directors of the Development Company (as the "Indemnified Parties"), the name of the Guarantor (as the "Indemnifier" of the relevant Participant) as specified in Schedule 9, including other relevant details.
- (f) Whether or not the Guarantor signs the Deed of Indemnity, by signing this Agreement, the Guarantor agrees to be bound by the terms and covenants expressed or implied on the part of the Indemnifier under the Deed of Indemnity in favour of the directors of the Development Company.

8. Project Account

8.1 Establish Bank account

- (a) The Development Company will, in its own name, open a bank account on behalf of the Project (**Project Account**);
- (b) All income and expenditure for the Project must only be conducted through the Project Account.

8.2 Account signatories

The signatories for the Project Account are the directors of the Development Company, two of which must sign all cheques negotiated against the Project Account

8.3 Payment of Project Costs

The Project Costs will be paid out of the Project Account as and when they fall due.

8.4 Project revenue

All moneys comprising net sale proceeds and other income of the Project (including rental, licence fees, occupation fees) will be paid into the Project Account as and when they are received. For the purpose of this clause “**net sale proceeds**” means the sale price of the Site or any part of the Site:

- (a) adjusted for rates and other charges, land tax, body corporate levies, rental, mortgage release fees and other normal and usual adjustments under the relevant contract of sale;
- (b) less payment of any sum required to release the mortgage taken by the Financier over the property sold; and
- (c) less any other Project Costs directly relating to the sale.

9. Distribution of Profit/Payment of Losses

9.1 Calculation timing

- (a) The Net Profit (if any) will be calculated immediately following completion of the Project.
- (b) The Project will be taken to be completed when all parts of the Site are sold and the proceeds of sale banked in the Project Account.

9.2 Calculation formula

The Project profit and the Project loss arising from the Project will be calculated in accordance with the following formula:

$$GI - PC = NP/NL$$

Where:

GI means the Gross Income;

PC means the Project Costs

NP/NL means:

if **GI – PC =** a positive number, the Project profit; or

if **GI – PC =** a negative number, the Project loss.

9.3 Determination

Following completion of the Project, the Participants authorise the Development Company to arrange for the Project accounts to be prepared in accordance with usual and proper accounting procedures and will deliver a set of accounts to each Participant.

9.4 Disbursement

Within 21 days of preparation of accounts under clause 9.3, the Development Company will disburse moneys as follows:

- (a) firstly in payment of any further sum required to discharge the Financier’s Loan relative to the Project;
- (b) secondly in payment of any outstanding and unpaid Project Costs;

- (c) thirdly on account of any contingency or reserve under clause 9.5;
- (d) fourthly in payment of any monies owing under the Project Services Agreement;
- (e) fifthly in repayment of Contributions and any called sum under clause 5.4;
- (f) sixthly as to the balance to the Participants in proportion to their Participating Interests.

9.5 Reserve

The Participants authorise the Development Company to create and maintain a contingency or reserve (as determined by the Participants under clause 6.3) for future expenditure including any sum on account of a GST liability.

9.6 Project Loss

Where the Project results in a loss, each Participant must pay its share of such loss to the Project Account within 14 days of receipt of the accounts under clause 9.3.

9.7 Dispute

- (a) In the event of a dispute in relation to the calculation made under clause 9.2 or in relation to preparation of the accounts under clause 9.3, the issue or issues in dispute will be determined by a Chartered Accountant appointed by agreement between the Participants and failing agreement as determined by a Chartered Accountant nominated by the Chief Executive Officer of the Australian International Disputes Centre on the application of any Participant.
- (b) The Chartered Accountant so appointed will act as an expert and not as an arbitrator and his decision will be final and binding on all Participants.
- (c) The costs of the Chartered Accountant will be a Project Cost.

10. Default

10.1 Sale of interest

- (a) If a Participant (**Defaulting Participant**) commits an Event of Default, any of the other Participants not in default (**Non-Defaulting Participants**) may by notice in writing (**Election Notice**) to the Defaulting Participant require the Defaulting Participant to sell the whole of its Participating Interest to the Non-Defaulting Participants (and where more than one in shares proportionate to the Participating Interest) for a sum equal to the aggregate of its Contribution and any called sum under clause 5.4, paid by the Defaulting Participant less any amount repaid by the Joint Venture to the Defaulting Participant on account of its Contribution and any called sum previously paid by the Defaulting Participant.
- (b) The Defaulting Participant must, at its own cost, execute or cause to be executed all such assurances, deeds, instruments and do or cause to be done all acts and things as may be necessary to vest its Participating Interest free of all encumbrances in the acquiring Participants under the preceding sub-clause.

10.2 Sale of Project

- (a) If an Election Notice is not given within 60 days of a Defaulting Participant committing an Event of Default, the Project will be submitted by the Participants for sale in such manner, such price and on such terms as may be agreed upon by the Non-Defaulting Participants and in the absence of agreement as determined by a Valuer agreed upon by the Non-Defaulting Participants and failing agreement within a period of 14 days, as determined by a Valuer appointed for this purpose by

the President of the Institute (or his nominee) on the application of any Non-Defaulting Participant.

- (b) The proceeds of sale of the Project will be paid into the Project Account and applied in the manner set out in clause 9.

10.3 Default Interest

- (a) A Participant must pay interest on any Contribution or other money due and payable by such Participant and unpaid, calculated from the due date for payment until the actual date of payment.
- (b) Interest will be calculated on a daily basis at the Default Rate; and
- (c) Any interest so recovered will belong to the Non-Defaulting Participants in proportions equal to their Participating Interest.

10.4 Other Rights

The provisions of this clause 10 are in addition to and without prejudice to all of the rights of any Participant at law or in equity.

11. Dispute resolution

11.1 Mediation

Except as otherwise expressly provided for in this Agreement, any dispute arising in connection with this Agreement must be dealt with as follows:

- (a) the parties must first refer the dispute to a mediator agreed to by the Participants and in default of agreement appointment by the President for the time being of the Queensland Law Society Incorporated (**Mediator**) on the terms of the standard mediation agreement approved by the Queensland Law Society Incorporated;
- (b) the Mediator's costs are to be shared equally by the parties. Apart from that, each party is to pay their own costs;
- (c) the reference to the Mediator commences when a Participant gives written notice to the others specifying the dispute and requiring its resolution under this clause 11; and
- (d) no information or documents obtained through or as part of the reference under this clause 11 to the Mediator may be used for any purposes other than settlement of the dispute under this clause 11.

11.2 Non-Resolution

If the dispute is not resolved within 21 days of commencement of reference to the Mediator under this clause 11, either party may then, but not earlier, commence court proceedings.

11.3 Venue

Any mediation under this clause must be held at the offices of the Queensland Law Society Incorporated unless the parties agree to another venue.

11.4 Obligations prevail

Each party must continue to perform its respective obligations under this Agreement despite the existence of a dispute or any proceedings under this clause 11.

11.5 Urgent Relief

This clause 11 does not prevent a party from obtaining any injunctive, declaratory or other interrogatory relief from a court which may be urgently required.

12. GST

12.1 Application

This clause applies if any party (**Supplier**) is or becomes liable to pay GST in relation to a supply of any goods, service or other thing which is made to a person (**Recipient**) whether a party to this Agreement or otherwise, under this Agreement (**Taxable Supply**).

12.2 Project Costs

The GST (plus or minus any adjustments) payable by the Supplier is a Project Cost.

12.3 Tax Invoice

The Supplier must issue an invoice or invoices to the Recipient for the amount of the GST referable to each Taxable Supply.

12.4 Input Tax Credit

The Supplier must include in an invoice under this clause such particulars as are required in order that the Recipient may obtain an input tax credit for the amount of the GST payable on the Taxable Supply.

12.5 Adjustment event

Where an Adjustment Event (as defined in the GST Law) in relation to any Taxable Supply has occurred, the Supplier must provide an Adjustment Note (as defined in the GST Law) to the Recipient within 28 days.

12.6 Excess

If:

- (a) a party becomes entitled to receive input tax credits in respect of a Taxable Supply to it by the Joint Venture under this Agreement or as a consequence of the supply of any goods, services or other things from a third party which is made to the party under or for the purpose of this Agreement; and/or
- (b) GST is payable to the party under this clause,

and the total is in excess of the GST payable by the party in respect of all Taxable Supplies pursuant to this Agreement, the amounts to which the party is otherwise entitled under this Agreement (whether in respect of GST or otherwise) must be reduced by the amount of the excess.

13. Notices

13.1 Mode of service

Any notice or other communication authorised or required to be given or served pursuant to this Agreement (**Notice**) must be given in writing and is effectively given by a party if:

- (a) delivered or posted to the other party or parties to the address set out in this Agreement or to such other address as may be notified in writing by that party to the other parties from time to time;

- (b) sent to the facsimile number of the other party or parties; or
- (c) sent by electronic mail to the electronic mail address of the other party or parties.

13.2 Notices by post

Notices sent by post will be treated as given four (4) Business Days after posting.

13.3 Notices by facsimile

Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report but notices given after 5 p.m. will be treated as given on the next Business Day.

13.4 Notices sent by email

Notices sent by electronic mail will be treated as given when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee.

13.5 Addresses

The addresses and facsimile numbers of the Participants are set out in Schedule 1.

14. Confidentiality

14.1 Non-disclosure

Subject to clause 14.2, the content of this Agreement will be kept confidential and is not to be disclosed to any other person without the written consent of all other parties.

14.2 Non-application

Clause 14.2 will not apply in the following circumstances:

- (a) any disclosure required by law;
- (b) disclosure to solicitors, barristers or other professional advisors under a duty of confidentiality; or
- (c) disclosure to bankers or other financial institutions of a party to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements.

15. Assignment

If any Participant assigns or transfers its interest under this Agreement to a Related Entity:

- (a) the assignor or transferor must cause that Related Entity to enter into a deed of covenant with the other parties to this Agreement to be bound by the terms of this Agreement as if it were named in this Agreement instead of the assignor as transferor; and
- (b) the assignor/transferor will not, by reason of the assignment or transfer, be released from its obligations to comply with and satisfy the terms and conditions of this Agreement.

15.2 No assignment

Subject to clause 15.1, the rights and obligations of each Participant under this Agreement are personal. They cannot be assigned, charged or otherwise dealt with and no party may attempt or purport to do so, without the prior written consent of all other Participants.

16. General

16.1 Costs

The legal costs of and incidental to the preparation and execution of this Agreement will be a Project Cost.

16.2 Waiver

The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any time to insist on performance of that or any other provision of this Agreement.

16.3 Severability

If it is held by any court of competent jurisdiction that:

- (a) any part of this Agreement is void, voidable, illegal or unenforceable;
- (b) this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement was severed from this Agreement,

that part will be severable from and not affect the continued operation of the rest of this Agreement.

16.4 Further assurance

Each party must do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the rights of any other party to this Agreement.

16.5 Entire Agreement

This Agreement and the Project Services Agreement:

- (a) constitute the entire agreement between the parties as to their subject matter and supersede all prior representations and agreements in connection with that subject matter; and
- (b) may be varied only in writing signed by the parties.

16.6 Governing law

The interpretation and construction of this Agreement will be governed and determined in accordance with the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that State.

16.7 Counterparts

- (a) This Agreement may consist of one or more counterparts. All counterparts will, when taken together, constitute the one document.

- (b) This Agreement, including counterparts of it, may be exchanged electronically (email and fax).
- (c) A party may execute this Agreement by signing any counterpart by convention means or by using an Electronic Signature, including a counterpart issued electronically (email and fax).
- (d) For the purpose of Sections 11 and 12 of the *Electronic Transactions (QLD) Act 2001*, the Buyer and the Seller consent to information being given by electronic communication.
- (e) For the purpose of this clause, **Electronic Signature** means an electronic method of signing that identifies the person and indicates their intention to sign the Agreement.

16.8 Acknowledgement and Disclosure document

Each Participant and each Guarantor acknowledges that prior to their execution of this Agreement, they received a copy of and were given the opportunity to read the Acknowledgement and Disclosure document, attached as Schedule 10 to this Agreement.

17. Guarantees

17.1 Guarantors

Guarantors and the Participants they guarantee are listed in Schedule 9.

17.2 Provision

To further secure the obligations of each Participant, each Guarantor hereby guarantees and if there is more than one Guarantor for a Participant, they jointly and severally guarantee to the other Participants, the performance, fulfilment and satisfaction of all and every obligations and liabilities under this Agreement of the Participant it guarantees or they guarantee.

17.3 Acknowledgements

In respect of the guarantee each Guarantor acknowledges:

- (a) that the guarantee will be a continuing guarantee and any limitation on the liability of the Guarantor which would otherwise arise by reason of the Guarantor's status as a guarantor or co-guarantor is hereby negated and the Guarantor's obligations will not be affected by any claim which the Participant guaranteed may have or claim to have against the other Participants;
- (b) that the liability of the Guarantor will not be impaired by the other Participants granting time or other indulgence to or making any composition with the Participant guaranteed or any other Guarantor or by the Participant guaranteed being a body corporate, being wound up or passing a resolution for its liquidation or by the appointment of a receiver, receiver and manager, provisional liquidator or administrator thereof;
- (c) that no payment will operate to discharge or reduce the Guarantor's liability if such payment is voidable as a preference under any law relating to bankruptcy or the winding up of companies and no grant or discharge or release consequent upon such payment will discharge the liability of the Guarantor; and
- (d) that no representations other than as set out in this Agreement, have induced the Guarantor to give its guarantee and that it or they have obtained independent legal advice on the obligations assumed under this Agreement as guarantors or have had the opportunity to do so.

Schedule 1 – The Participants

- (1) Name: GM Property Developments Pty Ltd ACN 106 576 952
(ATF McNamara Family Trust No.1)
Address: 7/62 Westacott Street, Nundah QLD 4012
Email address: garry@idgroup.net.au
- (2) Name: James Anthony Lindley and Mardi Scott Lindley
(ATF Lindley Retirement Fund)
Address: 41 Yabba Street, Ascot QLD 4007
Email address: jlindley@bigpond.net.au
- (3) Name: Nundah Storage Pty Ltd ACN 009 711 317
(ATF Moffat Investment Trust)
Address: 2/91 Moray Street, New Farm QLD 4005
Email address: gary_smith@tourismleisure.com.au
- (4) Name: Callum George Christie Stenson and Amanda Jane Stenson
(ATF Stenson Superannuation Fund)
Address: 5 Khartoum Street, Hendra QLD 4011
Email address: cstenson@savills.com.au
- (5) Name: Solmech Industries Pty Ltd ACN 010 008 198
(ATF K & D Smith Family Trust)
Address: 43 Farrington Street, Alderley QLD 4051
Email address: thesmith@westnet.com.au
- (6) Name: Todd Philip Mason and Megan Louise Mason
(ATF Mason Family Trust)
Address: 1268 Cooroy Belli Creek Road, Ridgewood QLD 4563
Email address: megan@tpmbuilders.com.au
- (7) Name: Shaw Damien Harrison and Cara Justine Harrison
(ATF S & C Harrison Family Super Fund)
Address: 7 Sawyer Court, Cannon Hill QLD 4170
Email address: sharrison@savills.com.au
- (8) Name: Timothy John Logan
Address: 59 Stillwater Drive, Twin Waters QLD 4564
- (9) Name: Austin Louis Kelly and Robina Susan Kelly
(ATF Wongajong Property Trust)
Address: 8 Rupert Terrace, Ascot QLD 4007
Email address: ozcowilliams2@bigpond.com
- (10) Name: Dirra Mark 2 Pty Ltd ACN 078 554 168
(ATF Goodman Superannuation Fund)
Address: 2 Mole Street, Teneriffe QLD 4005
Email address: davidgoodman@tourismleisure.com.au

Schedule 2 – Participating Interest and Contributions

| Name | Interest | Contributions |
|--|----------|-----------------------|
| GM Property Developments Pty Ltd ACN 106 576 952 (ATF McNamara Family Trust No.1) | 11.11% | \$150,000.00 |
| James Anthony Lindley and Mardi Scott Lindley (ATF Lindley Retirement Fund) | 7.41% | \$100,000.00 |
| Nundah Storage Pty Ltd ACN 009 711 317 (ATF Moffat Investment Trust) | 14.81% | \$200,000.00 |
| Callum George Christie Stenson and Amanda Jane Stenson (ATF Stenson Superannuation Fund) | 7.41% | \$100,000.00 |
| Solmech Industries Pty Ltd ACN 010 008 198 (ATF K & D Smith Family Trust) | 11.11% | \$150,000.00 |
| Todd Philip Mason and Megan Louise Mason (ATF Mason Family Trust) | 7.41% | \$100,000.00 |
| Shaw Damien Harrison and Cara Justine Harrison (ATF S & C Harrison Family Super Fund) | 7.41% | \$100,000.00 |
| Timothy John Logan | 11.11% | \$150,000.00 |
| Austin Louis Kelly and Robina Susan Kelly (ATF Wongajong Property Trust) | 14.81% | \$200,000.00 |
| Dirra Mark 2 Pty Ltd ACN 078 554 168 (ATF Goodman Superannuation Fund) | 7.41% | \$100,000.00 |
| <i>Total:</i> | | <i>\$1,350,000.00</i> |

Schedule 3 – Contributions Payment Date

14 September 2021

Schedule 4 – Name of Project

Lot 19 Prosperity Project

Schedule 5 – Site

See L1a
\$20k lent pre 30 June
\$80k lent 24/02/2022

Proposed Lot 19, Prosperity Place, Park Ridge QLD 4125 described as Proposed Lot 19 on SP 315039

Schedule 6 – Financier's Loan

\$2,100,000.00

Schedule 7 – Project Services Agreement

Contents

| | |
|---|----|
| Background..... | 3 |
| Operative provisions | 3 |
| 1. Definitions and interpretation | 3 |
| 2. Site acquisition | 6 |
| 3. Project implementation..... | 6 |
| 4. Remuneration for Services..... | 8 |
| 5. Termination | 9 |
| 6. Determination of disputes | 10 |
| 7. GST | 11 |
| 8. Notices | 11 |
| 9. Confidentiality..... | 12 |
| 10. General..... | 12 |
| 11. Counterparts..... | 14 |
| Schedule 1 – Land..... | 15 |
| Schedule 2 – Development Services..... | 15 |
| Schedule 3 – Development Services Fees..... | 15 |
| Schedule 4 – Marketing Services | 15 |
| Schedule 5 – Marketing Services Fees and Property Management Fee..... | 16 |
| Schedule 6 – Budget | 17 |
| Execution | 18 |

This deed is made on the _____ day of _____ 2021

Between **IDG Projects Pty Ltd ACN 125 923 711** of Unit 7, 62 Westacott Street, Nundah QLD 4012
(IDG)

And **Garry James McNamara** of Unit 7, 62 Westacott Street, Nundah QLD 4012
(GM)

And **Lot 19 Prosperity Pty Ltd ACN 649 416 053** of Unit 7, 62 Westacott Street, Nundah QLD 4012
(Principal)

Background

- A. IDG has introduced the Project to the Participants.
- B. The Principal enters into this Agreement, as agent for the Participants.
- C. The Project involves the acquisition of the Site, its development for industrial related purposes and marketing the Site for lease and/or sale.
- D. The Principal will purchase the Site pursuant to the Contract.
- E. The Participants, through the Principal wish to engage:
 - (1) IDG to undertake the Development Services; and
 - (2) GM to undertake the Marketing Services.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

Adverse Event in relation to a party, means anything that reasonably indicates that there is a significant risk that the party is or will become unable to pay its debts as they fall due. This includes:

- (a) a meeting of the party's creditors being called or held;
- (b) a step being taken to wind up that party;
- (c) the appointment of a controller or administrator as defined in Section 9 of the *Corporations Act 2001*;
- (d) the party entering into any type of arrangement with, or assignment for the benefit of all or any of its creditors;

- (e) the party being made subject to a deed of company arrangement;
- (f) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the party or any of its assets;
- (g) the party ceasing or indicating that it is about to cease, carrying on business;
- (h) a crime is committed by directors or employees of a party which the other party considers may have the potential to adversely affect the first party's reputation; and
- (i) without the prior written consent of the other party, there is a change in the beneficial ownership of a party's shares which change has the effect of altering the person or persons in effective control of that party.

Agreement means this deed.

Approvals means all permits, approvals and consents required from any Authority for development of the Site and construction of the Buildings.

Authority means any Government, municipal, statutory, public or other authority or body having jurisdiction over the Site, the Project or any part of them or anything relating to them.

Budget means the budget for the Project. A copy of the initial Budget is contained in Schedule 6.

Building means the building and ancillary improvements proposed to be constructed on the Site including associated car parking and landscaped areas.

Business Day means any day other than a Saturday, Sunday or public holiday in Brisbane.

Claims means any claim, demand, remedy, suit, injury, indemnity, damage, loss, cost, liability, action, proceeding, right of action or claim for compensation.

Contract means a contract to be entered into between the Seller and the Principal for the sale and purchase of the Site.

Development Services includes the services specified in Schedule 2.

Extraordinary Event means an act of God, strike, lock-out, COVID-19 event or other interference with work, war or act of terrorism, civil disturbance or unrest, fire, drought, earthquake, storm, flood, explosion, government restraint, prohibition or intervention, embargo, inability or delay in obtaining Approvals or any other cause whether of the kind specifically set out in this definition or otherwise which is not reasonably within the control of the person relying on the Extraordinary Event.

Gross Income means all money received by or on behalf of the Principal from all sources in respect of the Project, including:

- (a) rental income received from leasing activities; and
- (b) proceeds received and arising out of a sale of the Site or any part of the Site.

GST means a tax, impost or duty on the supply of goods or services levied under the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (C'th).

Land means the land referred to and described in Schedule 1.

Marketing Services means the services specified in Schedule 4.

Marketing Services Fees and **Property Management Fees** mean the fees payable to GM under clause 4.4 in the manner and payable at the intervals specified in Schedule 5.

Net Profit means the amount (if any) by which the Gross Income exceeds the Project Costs.

Participants means the parties to a development agreement entered into for the purposes of undertaking the Project.

Project has the meaning assigned to this definition in paragraph C of the Background.

Project Costs means the total of all expenditure of whatever description properly incurred, paid, payable or due, arising out of or in connection with the carrying out of the Project, including the Project Management Fee, but excluding the Project Success Fee.

Project Management Fee means the fee payable to IDG under clause 4.1 in the amount and payable in the manner specified in Part A of Schedule 3.

Project Success Fee means the percentage of Net Profit of the Project, as specified in Part B of Schedule 3.

Property Management Services mean the provisions of property management services in respect of the Site for the period from completion of construction of the Building until the Site is sold or leased.

Related Entity means any corporation or person which would be deemed to be related to one of the parties pursuant to the provisions of the *Corporations Act 2001*.

Seller means Pointcorp Heritage Park Pty Ltd ACN 631 998 377.

Services means the Development Services and the Marketing Services.

Site means the Land and where the context requires includes, improvements constructed on the Land.

1.2 Interpretation

In this Agreement, unless the subject or context is inconsistent:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to one gender includes each other gender;
- (d) a reference to the singular includes the plural and the plural includes the singular;
- (e) the word **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (g) a reference to all parties, clauses schedules or annexures is, unless otherwise provided, to the parties for the time being of this Agreement and to the clauses, schedules or annexures of or to this Agreement;

- (h) a reference to **\$** and **dollars** is to the lawful currency of Australia;
- (i) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (j) a party which is a trustee is bound both personally and in its capacity as trustee;
- (k) **including** and similar expressions are not words of limitation; and
- (l) headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.3 Adverse construction

This Agreement may not be construed adversely to a party just because that party prepared this Agreement.

2. Site acquisition

2.1 Receipt of Contract

IDG warrants that it has delivered to the Principal a true copy of the Contract and the Principal acknowledges receiving that document before signing this Agreement.

2.2 Due diligence

The Principal acknowledges that it has had the opportunity to undertake its own enquiry and investigation:

- (a) about the Contract, including specifically the rights and obligations on the part of the purchaser under the Contract; and
- (b) of the Site, including specifically for the purpose of determining the suitability of the Site for development.

3. Project implementation

3.1 Engagement of IDG

- (a) The Principal engages IDG as a consultant on the Project to provide the Development Services for the Project on the terms and conditions of this Agreement and IDG accepts this appointment.
- (b) IDG acknowledges that the Principal has entered into this Agreement on the strict understanding that GM will perform the Development Services or supervise the provision of Development Services (as the case may be) on behalf of IDG, and GM covenants with the Principal to perform the Development Services or supervise the provision of Development Services (as the case may be).

3.2 Standard and control

- (a) The day to day management and control of the Project lies with the Principal.
- (b) Notwithstanding clause 3.2(a) the Principal acknowledges that IDG has professional expertise in the provision of Development Services and has a need to use these services to carry out the Project.
- (c) The Principal agrees that IDG will carry out the Development Services. The Principal also agrees to adopt IDG's professional recommendations and advice when it is both reasonable and practical to do so.

3.3 Budgets and accounting records

IDG will:

- (a) review the Budget from time to time and make modifications showing income, expenditure, cash flow projection of the Project and each stage of it (subject to obtaining the Principal's written approval for any variation);
- (b) from time to time cause preparation of books of account giving a true and fair view of the Project, at that time;
- (c) keep books and records of the Project at the office of IDG on behalf of the Principal; and
- (d) make such information available to the Principal on request at all reasonable times for inspection and will provide copies of extracts to the Principal on request.

3.4 Engagement of GM

- (a) The Principal engages GM as consultant to undertake the Marketing Services on the terms and conditions of this Agreement and GM accepts this appointment.
- (b) The Principal engages GM as consultant to provide the Property Management Services on the terms and conditions of this Agreement and GM accepts this appointment.

3.5 Exclusive appointments

The:

- (a) appointment of IDG under clause 3.1; and
- (b) appointment of GM under clause 3.4,

is in each case exclusive and the Principal must not contract with any other person for the performance of any Services.

3.6 Standard

IDG and GM must:

- (a) follow this Agreement;
- (b) perform the Services with an appropriate degree of care, skill and judgement;
- (c) ensure that all information, advice, reports and data provided as part of the Services is true, accurate and up to date;
- (d) provide the Services in an efficient and professional manner in accordance with commercially prudent and professional business practices;
- (e) use the best of their professional knowledge and expertise;
- (f) comply with the lawful directions of the Principal;
- (g) comply with any laws which may apply in the delivery of the Development Services; and
- (h) follow the Principal's instructions when delivering various items of service.

3.7 Employees and agents

IDG and GM must ensure that any of their employees or agents who carry out any of the Services have the necessary skills, training, expertise and qualifications to perform such services.

3.8 Compliance with laws

In the performance of the Services IDG and GM must comply with the requirements of all laws of any kind applying to the performance of the Services.

3.9 Work for other parties

IDG and GM are free to perform services for anyone else in any capacity.

3.10 Principal's obligations

The Principal must:

- (a) provide all necessary instructions and directions or information reasonably necessary to carry out the Services;
- (b) do all things reasonably required to obtain all necessary Approvals and promptly sign all necessary consents, plans and other documents IDG reasonably requires in connection with all Approvals;
- (c) do all things necessary to raise sufficient money to fund the Project;
- (d) sign contract and other associated documents for construction of development works with a building contractor and other consultants introduced by IDG; and
- (e) allow access to the Site by IDG and others authorised by it to:
 - (i) conduct survey, engineering, building or architectural investigation;
 - (ii) erect any signs required by law in connection with the Approvals; and
 - (iii) undertake development of the Site;
- (f) act reasonably and in good faith; and
- (g) follow IDG's and GM's professional recommendations and advice when it is both reasonable and practical to do so.

4. Remuneration for Services

4.1 IDG's remuneration

The Principal will pay IDG, as consideration for the Development Services:

- (a) the Project Management Fee; and
- (b) the Project Success Fee if the Project realises Net Profit, but not otherwise.

4.2 Calculation

Net Profit will be calculated immediately following completion of the Project. The Project will be taken to be completed when the Site (or all parts of it) is sold and the proceeds of sale are received.

4.3 Dispute resolution

- (a) In the event of a dispute in relation to the calculation under the preceding clause, then the issue or issues in dispute will be determined by a Chartered Accountant appointed by agreement between the Principal and IDG, and failing agreement as determined by a Chartered Accountant nominated by the President for the time being of the Institute of Chartered Accountants of Australia (Qld) Division on the application of either the Principal or IDG.
- (b) The Chartered Accountant so appointed will act as an expert and not as an arbitrator and his decision will be final and binding on both the Principal and IDG.
- (c) The costs of the Chartered Accountant will be a Project Cost.

4.4 GM's remuneration

- (a) The Principal will pay GM as consideration for Marketing Services, the Marketing Services Fees.
- (b) The Principal will pay GM as consideration for the Property Management Services, the Property Management Fees.

5. Termination

5.1 IDG's default

The Principal may terminate this Agreement immediately upon written notice to IDG if:

- (a) IDG is in breach of its obligations set out in this Agreement and does not rectify the breach (to the extent that it can be rectified) within 14 days after receiving a written notice from the Principal specifying the breach and requiring it to be rectified;
- (b) IDG commits a substantial breach of this Agreement which is not capable of being remedied;
- (c) an Adverse Event happens to IDG; or
- (d) it is established that GM has become incapacitated to an extent that GM is unable to perform the Development Services on behalf of IDG in accordance with clause 3.1(b).

5.2 GM's default

The Principal may terminate the engagement of GM under this Agreement immediately upon written notice to GM if:

- (a) GM is in breach of its obligations set out in this Agreement and does not rectify the breach (to the extent that it can be rectified) within 30 days after receiving a written notice from the Principal specifying the breach and requiring it to be rectified;
- (b) GM commits a substantial breach of this Agreement which is not capable of being remedied; or
- (c) an Adverse Event happens to GM.

5.3 The Principal's default

IDG may terminate this Agreement immediately upon written notice to the Principal if:

- (a) the Principal is in breach of its obligations set out in this Agreement and does not rectify the breach (to the extent that it can be rectified) within 14 days after

receiving a written notice from IDG specifying the breach and requiring it to be rectified;

- (b) the Principal commits a substantial breach of this Agreement which is not capable of being remedied; or
- (c) an Adverse Event happens to the Principal; or
- (d) payments due to IDG in respect of the provision of the Development Services are more than 14 days overdue and remain unpaid and not disputed in good faith, at the expiry of the further 14 days after the Principal is given written notice of those unpaid amounts to IDG.

5.4 Consequences of termination

If this Agreement is terminated then:

- (a) in the case where termination arises because of a default by IDG, then IDG is not entitled to any compensation or payment in excess of the remuneration due for the Development Services performed to the date of termination;
- (b) in the case where termination arises because of default by the Principal, IDG is entitled to be paid the full remuneration which it would otherwise be entitled under this Agreement if a breach had not occurred including, without limitation on the right to be paid the Project Management Fee in full; and
- (c) any party may exercise any other rights at law.

6. Determination of disputes

6.1 Nature of dispute

If a dispute arises between the parties in relation to this Agreement or the Project (other than under clause 4.2), then either party may refer it to an independent expert (**Referee**) for determination.

6.2 Appointment of Referee

The Referee will be such person appointed by the President of the Queensland Law Society Inc. at the request of either party.

6.3 How the parties must act

When a dispute is referred to a Referee each party must:

- (a) use its best endeavours to make available to the Referee all facts and circumstances which the Referee may need to know in order to determine the dispute; and
- (b) ensure that its employees, agents and consultants are available to appear at any hearing or enquiry called for by the Referee; and
- (c) give a copy of any written submission it makes to the Referee to the other party at the same time as it gives the submissions to the Referee.

6.4 Obligations of the Referee

The Referee must decide the dispute and inform the parties of the result within 14 days after the date of submission of the dispute for determination, or within any longer period which the Referee reasonably determines.

6.5 Role of the Referee

The Referee acts as an expert and not as an arbitrator. The Referee's decision is final and binding on the parties. The Referee must give a written statement of reasons for the decision to both parties.

6.6 Costs

The Referee may decide who must pay the costs arising out of the reference of the dispute to the Referee including the Referee's reasonable costs. If the Referee does not make a decision about costs then each party must pay one half of the costs.

6.7 Bar to proceedings

Subject to clause 6.8, no party may:

- (a) commence any process in a court or seek to resolve a dispute by any other means (except by negotiation or in accordance with this clause);
- (b) purport to terminate this Agreement in accordance with clause 5 (other than in respect of an occurrence of an Adverse Event)

while the determination of the dispute under this clause is in progress.

6.8 Interlocutory relief

This clause 6 does not prevent a party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

7. GST

7.1 Taxable supply

If any supply under or in connection with this Agreement is a taxable supply, the recipient must pay to the supplier, as consideration in addition to the consideration provided for elsewhere in this Agreement, an amount equal to the GST payable on the taxable supply.

7.2 Payment

The recipient must pay any GST on demand but does not have to pay any GST until it is given a tax invoice for the supply.

7.3 Reimbursement

Despite any other provision of this Agreement, if a party is required to reimburse another party any costs, expense or other amount that a party has incurred in connection with this Agreement, the amount to be reimbursed must be reduced by any input tax credit which the party claiming reimbursement is entitled.

8. Notices

8.1 Time of notice

- (a) A notice sent by post is to be treated as given four (4) Business Days after the notice is posted.
- (b) A notice given by fax or by email is to be treated as given as soon as the sender receives a transmission report or message indicating that it was successfully delivered or received or the receipt of such notice has been acknowledged.

- (c) If that report is received outside the normal business hours of the person to whom it is sent, the notice is to be treated as being given at the beginning of business on the next Business Day.

8.2 Notices generally

- (a) Where any notice period specified in this document expires on a day other than a Business Day, then it will be deemed to expire at 5.00pm (Brisbane time) on the next Business Day following.
- (b) Any notice given under this Agreement must be in writing.

9. Confidentiality

9.1 Confidential material

All information acquired by each party in respect of the Project including, but not limited to, all data and related information which pertains to or results from the Project or any data or information contributed by any party to the Project, will be confidential and must not, unless otherwise agreed by the other party, be disclosed to any third party except to:

- (a) shareholders of the parties;
- (b) a Related Entity of such party;
- (c) the parties professional advisors;
- (d) any government, government department or other party as required by any statute; and
- (e) a bona fide purchaser of the Property provided that such prospective purchaser has executed an agreement for confidential treatment of all such data and information for the benefit of all parties.

9.2 Public announcement

Despite clause 9.1, IDG or GM may, for marketing and public relations with respect to the Project, make public announcements about the Project.

10. General

10.1 Assignment

- (a) Neither the Principal or IDG may assign its rights and interests under this Agreement without the prior written approval of the other which may be granted or refused in that party's absolute discretion.
- (b) GM may not assign its rights and interests under this Agreement without the prior written approval of the Principal which may be granted or refused in the Principal's absolute discretion.

10.2 Extraordinary Events

Except in respect of the obligations on the part of the Principal under Clause 2, each party to this Agreement is excused from the performance of any of its duties and obligations under this Agreement whenever and to the extent that such performance is prevented or interrupted or delayed by reason of an Extraordinary Event. A party claiming the benefit or protection of this clause must notify the other party or parties of the Extraordinary Event and must take all reasonable steps without delay to overcome or alleviate the effect of the Extraordinary Event.

10.3 Severability

If it is held by any court of competent jurisdiction that:

- (a) any part of this Agreement is void, voidable, illegal or unenforceable;
- (b) this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement were severed from this Agreement,

that part will be severable from and not affect the continued operation of the rest of this Agreement.

10.4 Costs and charges

The legal costs and outlays incurred by IDG and GM of and incidental to the negotiation and execution of this Agreement including all stamp duty (if any), taxes, fees, charges or other payments or imposts which are incurred or payable from time to time in relation to this Agreement are a Project Cost.

10.5 Time

Time is of the essence in respect of the obligation of the parties under this Agreement.

10.6 Waiver

No failure on the part of any party to enforce any of their rights under this Agreement will amount to a waiver of those rights, or a variation of those or any other rights or any estoppels.

10.7 Non-Business Day

In the event that the day for the payment of moneys or for the occurrence of an event or the doing of an act is not a Business Day then the time is extended to the next Business Day.

10.8 Entire agreement

It is acknowledged and agreed between the parties that the terms and conditions set out in this Agreement contain the entire agreement as concluded between the parties despite any negotiations or discussions prior to execution of this Agreement.

10.9 Further assurance

Each party must do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the rights of any other party to this Agreement.

10.10 Governing law

The interpretation and construction of this Agreement will be governed and determined in accordance with the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state.

11. Counterparts

- 11.1** This Agreement may consist of one or more counterpart copies and each counterpart will, when taken together, constitute the one document.
- 11.2** This Agreement, including counterparts of it, may be exchanged by facsimile or other electronic means.
- 11.3** The parties consent to this Agreement being provided, entered into and delivered to each party by means of electronic communication.

Schedule 1 – Land

The land described as Proposed Lot 19 on SP 315039.

Schedule 2 – Development Services

Services relating to the carrying out of the Project includes:

- (a) to determine the design, development program and timeframe for the Project and have it approved by the Principal;
- (b) to obtain all Approvals;
- (c) to develop a Budget for the approval of the Principal;
- (d) to call and evaluate tenders for construction of the Buildings and make recommendations to the Principal as to which tenders ought to be accepted;
- (e) to recruit and supervise any consultants and staff needed to carry out the Project;
- (f) to ensure that the Project is carried out and completed in accordance with the Principal's directions and instructions;
- (g) to prepare feasibility reports and compile other information to assist in obtaining borrowings for the purposes of the Project;
- (h) to make recommendations about the selection of a financier for the Project;
- (i) to administer Project accounts; and
- (j) to report to the Principal (both orally and in writing) as and when required.

Schedule 3 – Development Services Fees

PART A – Project Management Fee

An amount of \$50,000.00 (plus GST) payable by one instalment on issuance of Development Approval by the Logan City Council.

PART B – Project Success Fee

25% (or 27% if GM secures a sale or lease prior to completion of the Project) of Net Profit payable on completion of the Project.

Schedule 4 – Marketing Services

All marketing co-ordination services including:

- (a) preparation and implementation of marketing strategies including brochures, banner agent appointments, signage, target mail outs and marketing fees;
- (b) co-ordination of the majority of industrial agencies with updated listings of the Project at each stage of it's development via direct individual contact and email updates, agent functions on-site and meetings with agents to assist them with all matters relating to the Project;

- (c) sales and leasing negotiations to the point where documentation is ready for execution; and
- (d) co-ordination and implementation of all other marketing strategies and negotiations for the Project.

Schedule 5 – Marketing Services Fees and Property Management Fee

- (a) 1% of the gross sale price of the Project (or any part of the Project), payable on settlement of each sale transaction;
- (b) 3% of the first years annual net rental (excluding incentives) payable under a lease of the Project, payable immediately on the relevant tenant entering into possession of the leased area.
- (c) If GM secures a sale or lease (without intervention by another agent) clauses (a) and (b) above, do not apply and:
 - in the case of sale, 2% of the gross sale price of the Project payable on settlement of any sale transaction; and
 - in the case of lease, 10% of the first years annual net rent (excluding incentives) payable under a lease of the Project, payable immediately on the relevant tenant entering into possession of the leased area or on execution of lease documentation, whichever event is the first to occur.
- (d) A fee equal to 4% of the net annual rent payable by any tenant of the Site on account of Property Management Services.

Schedule 6 – Budget

Address: lot 19 CRESTMEAD

STANDARD FEASIBILITY FREESTANDING

| | | | | |
|-------------|------------|----------------|-------------|-------------|
| Site cover: | 57.14% | land | building | total |
| date: | 30/07/2021 | \$1,204,089.60 | \$2,181,892 | \$3,385,982 |

| | | | | | | |
|---------------------|------|----|--------|----------------|----|----------------|
| LAND AREA | 3360 | \$ | 340.00 | \$1,142,400.00 | | |
| stamps/legals | | | | \$61,689.60 | | |
| BUILDING COST | | | | | | |
| mezzanine office | m2 | | 184 | \$312,800.00 | \$ | 1,700.00 10% |
| storage mezz | | | 37 | \$12,950.00 | \$ | 350.00 |
| ground floor office | m2 | | 93 | \$144,150.00 | \$ | 1,550.00 5% |
| warehouse | m2 | | 1,606 | \$1,204,500.00 | \$ | 750.00 |
| TOTAL | m2 | | 1,920 | \$1,674,400.00 | \$ | 872.08 average |

| | | | | | | |
|---|--|--|--|-------------|-------------|---------------------------|
| COUNCIL DA | | | | \$15,000.00 | | |
| Council infrastructure & headworks fees | | | | \$50,000.00 | \$65,000.00 | \$33.85 council costs pm2 |
| QUU infrastructure | | | | \$50,000.00 | | |

| | | | | | | |
|--------------|------------------------------|--|--|-------------|--------------|----------------------------------|
| CONSULTANTS: | ARCHITECT | | | \$0.00 | | |
| | ENGINEERS | | | \$50,000.00 | | |
| | company set up | | | \$1,500.00 | | |
| | development documents | | | \$3,500.00 | | |
| | Qleave Fees | | | \$8,372.00 | | |
| | certifiers | | | \$3,500.00 | | |
| | consultants landscape | | | \$700.00 | | |
| | consultants other | | | \$6,500.00 | | |
| | SOIL TEST | | | \$2,500.00 | | |
| | TOWN PLANNING | | | \$5,600.00 | | |
| | QS bank appointment | | | \$3,000.00 | | |
| | book keeper/acc | | | \$4,500.00 | | |
| | insurance land | | | \$900.00 | | |
| | water connections | | | \$22,000.00 | | |
| | SURVEYORS | | | \$2,500.00 | | |
| | valuations | | | \$4,700.00 | | |
| | finance establishment & fees | | | \$18,000.00 | \$137,772.00 | \$71.76 consultants costs per m2 |

| | | | | | | |
|-------------------------------|----|--|--|-------------|--------------|---------------------------------------|
| MARKETING ADVERTISING | | | | \$6,000.00 | | |
| MARKETING SIGNAGE | | | | \$2,000.00 | | |
| MARKETING AGENT FUNCTION | | | | \$1,000.00 | | |
| BUILDING INTEREST & LINE FEES | | | | \$70,000.00 | | |
| state land tax | | | | \$19,000.00 | | |
| rates and water - council | | | | \$18,000.00 | | |
| project fee IDG | | | | \$50,000.00 | | |
| special requirements? | | | | \$5,000.00 | earthworks | |
| contingency | 5% | | | \$83,720.00 | \$254,720.00 | \$132.67 all other costs pm2 |
| TOTAL DEVELOPMENT COST: | | | | \$3,385,982 | | \$1,763.53 total development cost pm2 |

| | | | | | | |
|-------------------------|-------|--|--|-------------|-------------|---------------|
| INITIAL PROFIT MARGIN % | 34.0% | | | \$1,151,234 | | |
| COST PLUS PROFIT | | | | \$4,537,215 | | |
| ESTIMATED YIELD% | 5.50% | | | | | |
| RENTAL RATE PM2 | | | | \$130 | \$135 | \$138 rentals |
| ANNUAL NET RENTAL | | | | \$249,547 | \$259,147 | \$264,960 |
| potential SALE PRICE | | | | \$4,537,215 | \$4,711,761 | \$4,817,455 |
| | | | | \$2,363 | \$2,454 | \$2,509 \$pm2 |

| | | | | | | |
|---------------------------|---------------|---|--|-------------|-------------|-------------|
| AFTER SALE COSTS | | | | | | |
| legal fees | | | | \$4,000 | \$4,000 | \$4,000 |
| AGENTS LEASE FEES | 15.0% | | | \$37,432 | \$38,872 | \$39,744 |
| AGENTS SALES FEES | 2.50% | | | \$113,430 | \$117,794 | \$120,436 |
| incentives mths | holding costs | 4 | | \$23,333 | \$23,333 | \$23,333 |
| agent leasing bonus | | | | \$5,000 | \$5,000 | \$5,000 |
| CO ORD MARKETING FEES IDG | | | | \$52,858.56 | \$54,892.01 | \$56,123.35 |
| TOTAL | | | | \$236,054 | \$243,891 | \$248,637 |

| | | | | | | |
|------------------------------|------------------------------|--|--|------------|-------------|-------------|
| FINAL GROSS PROFITS | | | | \$915,179 | \$1,081,888 | \$1,182,836 |
| PROFIT RETURN % | | | | 27.03% | 31.95% | 34.93% |
| idg success fee | 25% | | | \$ 228,795 | \$ 270,472 | \$ 295,709 |
| | net profit | | | \$686,385 | \$811,416 | \$887,127 |
| investor input | \$1,350,000.00 | | | | | |
| projected investor | return on investment if sold | | | 50.84% | 60.10% | 65.71% |
| total equity | 40% | | | | | |
| annualised return if holding | | | | 18.48% | 19.20% | 19.63% |
| before dep/tax | | | | | | |

| | | |
|------------------------|-------------|-------|
| Gross Value | \$4,537,215 | |
| LVR | 60% | |
| Loan | \$2,722,329 | |
| TDC | \$3,499,606 | |
| Cash equity | \$777,276 | 22.2% |
| Equity upon completion | \$1,814,886 | |
| Net rental pa | \$249,547 | |
| Interest rate | 2.50% | |
| Int expense | \$68,058 | |
| Surplus post int exp | \$181,489 | |
| as Ro Cash Equity | 23.35% | |

Execution

Executed as a deed

EXECUTED by IDG Projects Pty Ltd
ACN 125 923 711 in accordance with Section
127(1) of the *Corporations Act 2001*:

.....
Sole Director/Secretary

Garry James McNamara
Full Name of Sole Director/Secretary – Print

SIGNED SEALED AND DELIVERY by
Garry James McNamara in the presence of:

.....
Witness

.....
Garry James McNamara

.....
Full Name of Witness – Print

EXECUTED by Lot 19 Prosperity Pty Ltd ACN
649 416 053 in accordance with Section 127(1) of
the *Corporations Act 2001*:

.....
Sole Director/Secretary

Garry James McNamara
Full Name of Director/Secretary – Print

Schedule 8 – Management Committee, Meetings and Voting

Management Committee

1. The Project is to be managed by a Management Committee who will be responsible for making decisions and giving approvals in accordance with the Terms of Reference (clause 6.3).
2. Each Participant (and where the Participant is not a natural person each Participant's nominee) will be a member of the Management Committee.
3. The Management Committee will be headed by David Francis Goodman (**the Chair**).
4. If the Chair is unable to attend a meeting, the remaining Participants will appoint a replacement chairperson for that meeting.
5. Meetings are to be held in Brisbane and will be convened upon the Chair giving the Participants seven (7) days notice in writing as to the time and place for the meeting.
6. The Management Committee will act through the Development Company for the purposes of implementing any decisions and approvals.

Meetings

7. The Chair must convene the first meeting within 21 days of the date of this Agreement.
8. All subsequent meetings will be held at intervals as may be determined by the Management Committee from time to time.
9. Minutes must be taken for all meetings and all decisions and approvals must be recorded in writing and delivered to the Development Company within 14 days of each meeting.

Voting

10. A quorum of the meeting will be when at least one half of the total Participants' Interests is represented.
11. Subject to the Terms of Reference, all decisions and approvals relating to the Project will be made by a majority of the total Participating Interests, present and entitled to vote at the meeting.
12. If a Participant is unable to attend a meeting, a Participant may appoint another Participant in writing to act as its proxy for the purposes of voting at a meeting.
13. All proxy votes will be valid as if they were given by the original Participant.

Schedule 9 – The Guarantors

- (1) For GM Property Developments Pty Ltd ACN 106 576 952 (ATF McNamara Family Trust No.1)
- Name:** Garry James McNamara
Address: 7/62 Westacott Street, Nundah QLD 4012
Email address: garry@idgroup.net.au
- (2) For James Anthony Lindley and Mardi Scott Lindley (ATF Lindley Retirement Fund)
- Name:** James Anthony Lindley and Mardi Scott Lindley
Address: 41 Yabba Street, Ascot QLD 4007
Email address: jlindley@bigpond.net.au
- (3) For Nundah Storage Pty Ltd ACN 009 711 317 (ATF Moffat Investment Trust)
- Name:** Gary Warwick Smith
Address: 2/91 Moray Street, New Farm QLD 4005
Email address: gary_smith@tourismleisure.com.au
- (4) For Callum George Christie Stenson & Amanda Jane Stenson (ATF Stenson Superannuation Fund)
- Name:** Callum George Christie Stenson
Address: 5 Khartoum Street, Hendra QLD 4011
Email address: cstenson@savills.com.au
- (5) For Solmech Industries Pty Ltd ACN 010 008 198 (ATF K & D Smith Family Trust)
- Name:** Keith Andrew Smith
Address: 43 Farrington Street, Alderley QLD 4051
Email address: thesmith@westnet.com.au
- (6) For Todd Philip Mason and Megan Louise Mason (ATF Mason Family Trust)
- Name:** Todd Philip Mason
Address: Address: 1268 Cooroy Belli Creek Road, Ridgewood QLD 4563
Email address: megan@tpmbuilders.com.au
- (7) For Shaw Damien Harrison and Cara Justine Harrison (ATF S & C Harrison Super Fund)
- Name:** Shaw Damien Harrison
Address: 7 Sawyer Court, Cannon Hill QLD 4170
Email address: SHarrison@savills.com.au
- (8) For Austin Louis Kelly and Robina Susan Kelly (ATF Wongajong Property Trust)
- Name:** Austin Louis Kelly
Address: 8 Rupert Terrace, Ascot QLD 4007
Email address: ozcowilliams2@bigpond.com

(9) For Dirra Mark 2 Pty Ltd ACN 078 554 168 (ATF Goodman Family Superannuation Fund)

Name: David Francis Goodman
Address: 2 Mole Street, Teneriffe QLD 4005
Email address: davidgoodman@tourismleisure.com.au

Schedule 10 – Deed of Indemnity

Deed of Indemnity

Between

(Indemnified Parties)

And

(Indemnifier)


WILSON LAWYERS

Ground Floor
32 Logan Road
Woolloongabba QLD 4102
Telephone No: 07 3392 0099
Facsimile No: 07 3217 4679

Contents

| | |
|--|---|
| Background..... | 3 |
| Operative provisions | 3 |
| 1. Definitions and Interpretation | 3 |
| 2. Indemnity..... | 4 |
| 2.1 Indemnity..... | 4 |
| 2.2 Payments on demand under indemnity..... | 4 |
| 2.3 Continuing security..... | 4 |
| 2.4 Primary obligation..... | 4 |
| 2.5 Obligations unconditional | 5 |
| 2.6 Re-instatement of rights of Indemnified Party..... | 5 |
| 3. Payments and Interest | 5 |
| 3.1 Payments..... | 5 |
| 3.2 Interest..... | 5 |
| 4. General..... | 6 |
| 4.2 Costs | 6 |
| 4.3 Set-off..... | 6 |
| 4.4 Waiver | 6 |
| 4.5 Rights cumulative | 7 |
| 4.6 Electronic communication and counterparts | 7 |
| Execution | 8 |

This deed is made on the _____ day of _____ 2021

Between

(Indemnified Parties)

And

(Indemnifier)

Background

- A. The parties to this deed are along with others, parties to the Development Agreement.
- B. The Lender requires that the Indemnified Parties (as the directors of the Development Company) enter into the Guarantee and Indemnity, as a condition of the Lender providing the Financier's Loan.
- C. The Indemnified Parties have agreed to sign the Guarantee and Indemnity, subject to the Indemnifier entering into this deed with the Indemnified Parties.

Operative provisions

1. Definitions and Interpretation

1.1 In this deed, unless the context otherwise requires:

Applicable Interest Rate means the same rate of interest payable under the terms of the Financier's Loan in circumstances where the Development Company defaults in meeting payment of moneys when due;

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane;

Development Agreement means the agreement dated [.....] 2021 made between the Development Company, the parties and others in respect of the property situated at Proposed Lot 32, Warehouse Circuit, Yatala QLD 4207;

Development Company means Lot 19 Prosperity Pty Ltd ACN 649 416 053;

Financier has the same meaning as it does in the Development Agreement;

Financier's Loan means a loan intended to be obtained by the Development Company from the Financier, for an amount up to \$2,100,000.00 for the purpose contemplated by the Development Agreement;

Guarantee and Indemnity means a guarantee and indemnity to be given by each of the Indemnified Parties (jointly and severally) to the Financier as a condition of the Financier providing the Financier's Loan;

Indemnified Event means the Financier calling upon, making demand under or a claim against or otherwise pursuing one or both of the Indemnified Parties in connection with or pursuant to the terms of the Guarantee and Indemnity;

Indemnified Payment means any money paid or payable by one or both of the Indemnified Parties in respect of the Indemnified Event;

Indemnity Proportion means 'IP' in the following equation:

$$IP = PI \times IA$$

where:

'PI' means Participating Interest; and

'IA' means the amount payable by one or both of the Indemnified Parties to the Financier or its related entities as a result of any one Indemnified Event;

Indemnifier's Participant means ; and

Participating Interest means the same percentage as the Indemnifier's Participant's Participating Interest under the Development Agreement, as set out in Schedule 2 of the Development Agreement.

1.2 Clause 1.2 of the Development Agreement applies in the interpretation of this deed.

2. Indemnity

2.1 Indemnity

The Indemnifier unconditionally and irrevocably indemnifies the Indemnified Parties against any:

- (a) demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by the Indemnified Parties in respect of the Indemnified Event or as a direct or indirect result of any claim made or purported to be made in respect of the Indemnified Event; and
- (b) Indemnified Payments,

but only to the extent of the Indemnifier's Participant's Indemnity Proportion with respect to any one Indemnified Event.

2.2 Payments on demand under indemnity

- (a) The Indemnifier must pay to the Indemnified Parties immediately on demand any amounts due to the Indemnified Parties under clause 2.1.
- (b) The Indemnified Parties may make such a demand on the Indemnifier from time to time after an Indemnified Event has occurred.

2.3 Continuing security

This deed is continuing indemnity for all amounts referred to in clause 2.1.

2.4 Primary obligation

The Indemnifier's obligations under this deed is a primary obligation and the Indemnified Parties are not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Indemnifier under this deed.

2.5 Obligations unconditional

The Indemnifier's obligations under this deed are absolute and unconditional. They are not subject to any set-off, counter claims or conditions. In particular, the Indemnifier's obligations will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this deed.

2.6 Re-instatement of rights of Indemnified Party

If any transaction or payment under this deed is void, voidable or otherwise unenforceable or refundable:

- (a) the Indemnified Parties are entitled against the Indemnifier to all rights under this deed and any collateral security that it would have had if the transaction or payment had not occurred or been made, as the case may be; and
- (b) the Indemnifier must do all things and sign such documents necessary to restore to the Indemnified Parties their rights under this deed or any collateral security immediately before that transaction or payment.

3. Payments and Interest

3.1 Payments

The Indemnifier must make payments to the Indemnified Parties under this deed;

- (a) on demand at the Indemnified Parties' respective address specified in clause 4.1(b) or at such other place reasonably requested by the Indemnified Parties;
- (b) in a manner reasonably required by the Indemnified Parties; and
- (c) in immediately available funds and without set-off, counter claim, condition or, unless required by law, deduction or withholding.

3.2 Interest

- (a) The Indemnifier must pay interest on any overdue amount owing under this deed at the Applicable Interest Rate.
- (b) The interest will:
 - (i) accrue from day to day and be capitalised on the last day of each month;
 - (ii) be computed from and including the day when the money on which interest is payable becomes owing to the Indemnified Parties by the Indemnifier until but excluding the day of payment of that money;
 - (iii) be calculated on the actual number of days elapsed on the basis of a 365-day year; and
 - (iv) be paid by the Indemnifier on demand.

4. General

4.1 Notices

(a) All demands, consents, elections, directions or notices authorised or required to be made under this deed must be in writing and may be given to or served upon a party to this deed:

- (i) by being left at or sent by prepaid post to the address set out in clause 4.1(b); or
- (ii) by email transmission to the email address set out in clause 4.1(b),

and any such demand, consent, election, direction or notice is deemed duly served in the case of post on the fifth Business Day after posting, and in the case of email transmission upon confirmation from the sender's server that the email has been sent.

(b) Until otherwise notified, the addresses and email addresses of the parties are as follows:

[Name] Address

 Email

[Name] Address

 Email

Indemnifier: Address

 Email

4.2 Costs

(a) Each party bears their own costs in relation to the preparation and negotiation of this deed.

(b) In addition to all other liabilities of the Indemnifier under this deed, the Indemnifier must also pay to the Indemnified Parties immediately on demand any costs or expenses (including legal and out-of-pocket expenses) which may be incurred in or in connection with the exercise or purported exercise of any right, authority or remedy conferred on the Indemnified Parties under this deed.

4.3 Set-off

The Indemnified Parties may set off any money due for payment by the Indemnified Parties to the Indemnifier whatsoever, including any money held by the Indemnified Parties for the account of the Indemnifier in any place, against any money due for payment by the Indemnifier to the Indemnified Parties under this deed.

4.4 Waiver

A right in favour of the Indemnified Parties under this deed or a breach of an obligation of the Indemnifier under this deed can only be waived by an instrument duly executed by the Indemnified Parties. No other act, omission or delay of the Indemnified Parties will constitute a waiver binding against, or estoppel against, the Indemnified Parties.

4.5 Rights cumulative

The rights of the Indemnified Parties under this document are cumulative and are in addition to any of their other rights.

4.6 Electronic communication and counterparts

- (a) This deed may consist of one or more counterparts and, if so, the counterparts taken together constitute one document.
- (b) This deed, including counterparts of it, may be exchange electronically (including email and facsimile).
- (c) A party to this deed may execute this Contract by signing any counterpart including a counterpart issued electronically.
- (d) For the purposes of Section 11 and 12 of the *Electronic Transactions (QLD) Act 2001*, the parties consent to information being given by electronic communication.

Execution

Executed as a deed

SIGNED, SEALED AND DELIVERED by
..... in the presence of:

.....
Witness

.....
Full name of Witness – print

SIGNED, SEALED AND DELIVERED by
..... in the presence of:

.....
Witness

.....
Full name of Witness – print

SIGNED, SEALED AND DELIVERED by
..... in the presence of:

.....
Witness

.....
Full name of Witness – print

SIGNED, SEALED AND DELIVERED by

in the presence of:

.....
Witness

.....
Full name of Witness – print

SIGNED, SEALED AND DELIVERED by

in the presence of:

.....
Witness

.....
Full name of Witness – print

Schedule 11 - Acknowledgment and Disclosure

Risk Factors

You acknowledge that investment in the Project involves a degree of risk. The actual performance of the Project and return to the Participants may be affected by a number of risks which could result in a variance from Budget projections including:

- Local and world economic conditions impacting in a negative way, creating a downturn in the local property market;
- Interest rates;
- Increased development costs from those forecast in the Budget;
- Government legislation or intervention;
- Inflation or inflationary expectations; and
- Natural disasters, social upheaval or war in Australia or overseas.

Acknowledgement

You acknowledge that:

- You have investigated and are fully satisfied with respect to the subject matter of the Development Agreement;
- The projections contained in the Budget represent estimates only and may be based on assumptions which (while being reasonable) may not be correct;
- You have had the opportunity to seek out independent specific legal and financial advice;
- You have not relied on any statement or representation made by any person
- You have entered into the Development Agreement in reliance on your own investigations; and
- You understand that no guarantee is provided as to the rate of return on investment or profit to the Participants.

Disclosure

The following interests and related entities are disclosed:

- Garry James McNamara:
 - a. is the sole director of GM Property Developments Pty Ltd ACN 106 576 952 and a beneficiary of the McNamara Family Trust No.1 being a Participant under this Agreement;
 - b. is the sole director of IDG Projects Pty Ltd ACN 125 923 711 which will receive financial benefits under the Project Services Agreement; and
 - c. will in his own right receive financial benefits under the Project Services Agreement.

.....

Execution

Executed as a deed

A. DEVELOPMENT COMPANY AND PARTICIPANTS

**EXECUTED by Lot 19 Prosperity Pty Ltd
ACN 649 416 053** in accordance with Section
127(1) of the *Corporations Act 2001*:

.....
Sole Director/Secretary

Garry James McNamara
Full Name of Sole Director/Secretary – Print

**EXECUTED by GM Property Developments
Pty Ltd ACN 106 576 952 (ATF McNamara
Family Trust No. 1)** in accordance with
Section 127(1) of the *Corporations Act 2001*:

.....
Sole Director/Secretary

Garry James McNamara
Full Name of Sole Director/Secretary – Print

SIGNED, SEALED AND DELIVERED by
**James Anthony Lindley and Mardi Scott
Lindley (ATF Lindley Retirement Fund)** in
the presence of:

.....
Witness

.....
James Anthony Lindley

.....
Full Name of Witness – Print

.....
Mardi Scott Linley

**EXECUTED by Nundah Storage Pty Ltd ACN
009 711 317 (ATF Moffat Investment Trust)**
in accordance with Section 127(1) of the
Corporations Act 2001:

.....
Sole Director/Secretary

.....
Full Name of Sole Director/Secretary – Print

SIGNED, SEALED AND DELIVERED by
**Callum George Christie Stenson and
Amanda Jane Stenson (ATF Stenson
Superannuation Fund)** in the presence of:

.....
Witness

.....
Callum George Christie Stenson

.....
Full Name of Witness – Print

.....
Amanda Jane Stenson

EXECUTED by **Solmech Industries Pty Ltd
ACN 010 008 198 (ATF K & D Smith Family
Trust)** in accordance with Section 127(1) of the
Corporations Act 2001:

.....
Director

.....
Director/Secretary

.....
Full Name of Director – Print

.....
Full Name of Director/Secretary – Print

SIGNED, SEALED AND DELIVERED by **Todd
Philip Mason and Megan Louise Mason
(ATF Mason Family Trust)** in the presence of:

.....
Witness

.....
Todd Philip Mason

.....
Full Name of Witness – Print

.....
Megan Louise Mason

SIGNED, SEALED AND DELIVERED by
**Shaw Damien Harrison and Cara Justine
Harrison (ATF S & C Harrison Super Fund)**
in the presence of:

.....
Witness

.....
Shaw Damien Harrison

.....
Full Name of Witness – Print

.....
Cara Justine Harrison

SIGNED, SEALED AND DELIVERED by
Timothy John Logan in the presence of:

.....
Witness

.....
Timothy John Logan

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by
Austin Louis Kelly and Robina Susan Kelly
(ATF Wongajong Property Trust) in the
presence of:

.....
Witness

.....
Austin Louis Kelly

.....
Robina Susan Kelly

.....
Full Name of Witness – Print

EXECUTED by **Dirra Mark 2 Pty Ltd ACN 078**
554 168 (ATF Goodman Family
Superannuation Fund) in accordance with
Section 127(1) of the *Corporations Act 2001*:

.....
Director

.....
Director/Secretary

.....
Full Name of Director – Print

.....
Full Name of Director/Secretary – Print

B. GUARANTORS

SIGNED, SEALED AND DELIVERED by
Garry James McNamara in the presence of:

.....
Witness

.....
Garry James McNamara

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by
James Anthony Lindley and Mardi Scott Lindley in the presence of:

.....
Witness

.....
James Anthony Lindley

.....
Full Name of Witness – Print

.....
Mardi Scott Lindley

SIGNED, SEALED AND DELIVERED by **Gary Warwick Smith** in the presence of:

.....
Witness

.....
Gary Warwick Smith

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by
Callum George Christie Stenson in the presence of:

.....
Witness

.....
Callum George Christie Stenson

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by **Keith Andrew Smith** in the presence of:

.....
Witness

.....
Keith Andrew Smith

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by **Todd Philip Mason** in the presence of:

.....
Witness

.....
Todd Philip Mason

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by **Shaw Damien Harrison** in the presence of:

.....
Witness

.....
Shaw Damien Harrison

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by **Austin Louis Kelly** in the presence of:

.....
Witness

.....
Austin Louis Kelly

.....
Full Name of Witness – Print

SIGNED, SEALED AND DELIVERED by **David Francis Goodman** in the presence of:

.....
Witness

.....
David Francis Goodman

.....
Full Name of Witness – Print
