

# PAMD Form 30c



ABN: 24 830 236 406

Department of Employment, Economic  
Development and Innovation

## Warning statement

Property Agents and Motor Dealers Act 2000 — Chapter 11  
This form is effective from 1 October 2010.

### Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

**The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.**

#### Property address

**Note:** If no street address is applicable, use lot and plan information to identify the property

Street name and number Unit No 50709 "Proximity Hamilton", 37B Harbour Road  
Suburb Hamilton State QLD Postcode 4007

# WARNING

**DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.**

**The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.**

### **You should obtain independent:**

- **legal advice** See note 1
- **valuation** See note 2

### Cooling-off period

#### What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

#### When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract

#### When does the cooling-off period end?

Your cooling-off period ends at **5.00pm on the fifth business day** after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

#### Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

## Cooling-off period continued

### What should I do during the five (5) day cooling-off period?

It is strongly recommended that you seek independent legal advice and obtain an independent valuation of the property during this time and that you understand and agree with the terms and conditions of the contract.

### How do I terminate the contract during the cooling-off period and what happens if the relevant contract is terminated?

If you want to terminate the contract at any time before the end of the five (5) day cooling-off period, you must give a signed, dated notice to the seller indicating that you wish to terminate the contract during the cooling-off period. The notice must state that the relevant contract is terminated under section 370A of the *Property Agents and Motor Dealers Act 2000*. The seller must refund your deposit within **14 days** of the termination. The seller may deduct a termination penalty of up to **0.25% of the purchase price**. Make sure you terminate any building contract associated with this property if you terminate this contract during the cooling-off period.

### What happens after the cooling-off period ends?

If you do not terminate the contract during the cooling-off period, you are legally bound by the contract, subject to the terms and conditions of the contract.

## Other important information

**Read the attached proposed relevant contract. Do not be pressured into signing the proposed relevant contract before you have read it.**

### Note 1 - Independent legal advice

Do you fully understand the legal consequences of signing the attached proposed relevant contract? Before signing the proposed relevant contract, it is strongly recommended that you seek independent legal advice and clarify any queries or concerns you have about buying the property. Are you sure the person you have obtained advice from is totally independent from the seller or seller's agent? **Exercise extreme caution in accepting the advice of anyone referred to you by the seller or seller's agent.**

### Note 2 - Independent valuation of the property

Are you sure the purchase price for this property is fair? You should consider obtaining an independent valuation of the property before you sign the contract, or before your cooling-off period ends. When choosing a valuer you should ask whether the valuer has any relationship with any person involved in selling the property and whether they have professional indemnity insurance. Before you engage the valuer ask about the cost of the valuation. For more information about valuations, go to [www.fairtrading.qld.gov.au/house-valuation.htm](http://www.fairtrading.qld.gov.au/house-valuation.htm).

### Building contracts

For building contracts associated with the purchase of residential property, you should ensure that the building contract price is not over-valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

Domestic building contracts also have a cooling-off period under the *Domestic Building Contracts Act 2000* (section 72). Please check the Building Services Authority of Queensland website at [www.bsa.qld.gov.au](http://www.bsa.qld.gov.au) for further information about building contracts. Remember to terminate any building contracts related to this property if you terminate this contract.

### Claim fund and property developers

A claim fund exists which, in some cases, enables buyers to make a claim if they suffer financial loss because a real estate agent commits a claimable offence. Strict guidelines and timeframes apply. If you suffer loss while buying an investment property or buying any property from a property developer you can not make a claim for loss against the fund.

### How do I know if I'm dealing with a licensed real estate agent or property developer and/or obtain further information about purchasing real estate?

The Fair Trading website at [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) provides you with useful information about purchasing property. You can check that you are dealing with a licensed real estate agent or property developer at [www.fairtrading.qld.gov.au/are-you-licensed.htm](http://www.fairtrading.qld.gov.au/are-you-licensed.htm) or by phoning 13 13 04.

## Buyer's acknowledgment

I/we have read all sections of this warning statement and I/we acknowledge that by signing this warning statement, my/our attention has been directed to this warning statement and the attached proposed relevant contract by a clear statement and I/we have signed the warning statement BEFORE I/we signed the attached proposed relevant contract.

Signing this Warning Statement negates any termination right I/we may have had under section 370 of the *Property Agents and Motor Dealers Act 2000*.

Name Alexkat Pty Ltd ACN 167 768 836 as trustee for Harbour Road Trust

Name .....

Signature .....

Signature .....

Date ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Date ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

**BCCM Form 14****Information sheet (body corporate information)**

Body Corporate and Community Management Act 1997  
This form is effective from 1 August 2013

**WARNING**

**You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.**

**Notice to agent:** The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract. Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you:

- ☒ a separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*
- ☒ a disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (e.g. the amount of annual contributions currently set by the body corporate and payable by the lot owner)
- ☒ for proposed lots (off the plan), a community management statement for the scheme provided by the seller, containing important details about the scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme.

**Community titles schemes**

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. Community titles schemes include proposed lots purchased off the plan and existing lots within duplexes, residential unit blocks, high-rise apartment complexes, townhouse complexes and some commercial premises. They contain individually owned lots and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider whether living or investing in a community titles scheme suits your lifestyle and financial needs. When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are **NOT** able to decline to be members of their body corporate. Normally, an elected committee carries out day-to-day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements

Common obligations of individual lot owners include:

- making financial contributions towards the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition

## Suggested searches and matters to investigate

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

### 1. Department of Natural Resources and Mines

Buyers can obtain a copy of the community management statement (CMS) and plans for the scheme. Further information is available from Property, titles and valuations by phoning 13 QGOV (13 74 68) or via the Department website: [www.dnrm.qld.gov.au](http://www.dnrm.qld.gov.au)

### 2. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme. General information and fact sheets are also provided about body corporate rules and regulations. For more information, phone 1800 060 119 or visit [www.justice.qld.gov.au/bccm](http://www.justice.qld.gov.au/bccm)

### 3. Body Corporate Secretary

Obtain a **Body Corporate Information Certificate** from the body corporate secretary, or body corporate manager, whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Sections 209 or 217 of the Act).

A search of the body corporate records can provide other important information, such as whether any improvements to the lot you are purchasing (balcony enclosure, air conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, check for any agreements the body corporate may have entered into, for example, caretaking, letting, body corporate management or lift maintenance.

## Checklist

- ☒ By purchasing this property, do you know you will be part of a body corporate?
- ☒ Are you aware of any contracts the body corporate is a party to?
- ☒ Have you read and understood the body corporate by-laws?
- ☒ Do you understand your likely financial contributions to the body corporate?
- ☒ Are you aware that an adjustment of lot entitlements may increase or decrease your financial contributions to the body corporate?
- ☒ Are you aware that your financial contributions to the body corporate will vary as the financial liabilities of the body corporate change?
- ☒ Do you understand your maintenance responsibilities?
- ☒ Do you understand the role of the body corporate manager and on-site manager (if appointed)?

## Buyer's Acknowledgement

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name Alexcat Pty Ltd ACN 167 768 836 as trustee for Harbour Road Trust  
Postal address 5 Marina Street STORNCLEIFE QLD 4107  
Telephone \_\_\_\_\_ Email \_\_\_\_\_  
Signature/s [Signature] Date 5.2.2014

Body Corporate and Community Management

[www.justice.qld.gov.au](http://www.justice.qld.gov.au)

1800 060 119

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# PROXIMITY HAMILTON

## SALE CONTRACT REFERENCE SCHEDULE

**Contract Date**

**Agent**

21/2/14  
(name) 360 Project Marketing  
(address) PO Box 361 SURFERS PARADISE QLD 4217  
(telephone) 07 5539 0360 (facsimile) 07 5538 2018

**Seller**

(name) Oakstead Harbour Project Pty Ltd ACN 161 237 047  
(address) c/- Peloton Group, Suite 11, 2-4 Kings Lane, Darlinghurst NSW 2010  
(telephone) (02) 9357 5288 (02) 9357 5288 (02) 9357 5288

**Seller's Solicitor**

(name) HWL EBSWORTH LAWYERS (ATTN: Linda Margetts)  
(address) Level 23, 123 Eagle Street, Riverside Centre (GPO Box 2033) Brisbane Qld 4000  
(telephone) (07) 3002 6726 (facsimile) 1300 368 717  
(email) lmargetts@hwle.com.au

**Buyer**

(name) Alexkat Pty Ltd  
(A.C.N.) 167 768 836 (name of trust) Harbour Road Trust  
(address) 5 Marina Street SHORNCLIFFE QLD 4107  
(telephone) (email)

**Buyer's Solicitor**

(name)  
(address)  
(telephone) (fax)

**Deposit Holder**

HWL EBSWORTH LAWYERS

**Property**

(address) Unit No. **50709** "Proximity Hamilton" being part of the Development known as "Portside Wharf" situated at 1C Hercules Street, Hamilton Qld 4007.

(description) The proposed community title lot **50709** as shown on the Identification Plan contained in the Disclosure Documents ("Lot") with an internal fitout generally in accordance with the Floor Layout Plan and the right to the exclusive use areas/assets (if any) shown as attaching to the Lot in Schedule E of the Proposed Subsidiary CMS as identified on the Exclusive Use Allocation Plan.

**Price**

\$375,000.00

**Total Deposit** \$37,500.00

**Initial Deposit** \$1,000.00

**Balance Deposit** \$36,500.00

payable to HWL Ebsworth Lawyers;

payable on the signing of this Contract; and

payable within 14 days after the Contract Date. \*

[\*Not applicable if full Deposit paid when Buyer signs this Contract]

**Guarantor**

[NOTE: ONLY IF BUYER IS A COMPANY OR TRUSTEE]

(Guarantor 1 Name) Mark William Bucknall

(Guarantor 1 Address) 5 Marina Street SHORNCLIFFE QLD 4107

(Guarantor 2 Name)

(Guarantor 2 Address)

[Complete full name and address of all Guarantors]

**Personal Use**

☒ **NO** Tick NO if buying for investment purposes.

☐ **YES** Tick YES if buying for owner/occupier purposes.

Tick as applicable. If not completed, assumed non-personal use by Buyer.

**Foreign Interest**

☒ **NO** ☐ **YES** [Tick as applicable. If not completed, Buyer assumed not a Foreign Interest.]

Buyer 1 Initials

Buyer 2 Initials

Seller's Initials

Version 1  
19.07.13

**PROXIMITY.**  
HAMILTON

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HWL  
EBSWORTH  
LAWYERS

# CONTRACT TERMS

## A. MEANING OF TERMS

### 1. Reference Schedule

Terms in the Reference Schedule have the meanings shown opposite them.

### 2. Disclosure Documents

Terms used in the Disclosure Documents (including the Statutory Disclosure Statements and other statements contained in the Disclosure Documents), unless otherwise defined, have the meanings given to them in this Contract.

### 3. BCCM Act

Terms not defined in this Contract but defined in the BCCM Act have the meanings given to them in the BCCM Act.

### 4. Definitions

In this Contract, unless the context otherwise indicates:

**"Authority"** means any body, government, person or otherwise having or exercising control over the development, use or operation of the Principal Scheme, Subsidiary Scheme or the Development or any services to be provided to the Principal Scheme, Subsidiary Scheme or the Development (or where the context requires, the proposed Subsidiary Scheme).

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

**"Balance Price"** means the Price, less any cash Deposit paid, adjusted in accordance with this Contract.

**"Bank Cheque"** means a cheque issued by a bank as defined in Section 5 of the *Banking Act 1959 (Cth)* or a bank constituted under a law of a State of Australia and drawn on itself.

**"BCCM Act"** means the *Body Corporate and Community Management Act 1997 (Qld)*.

**"Builder"** means the builder of the Subsidiary Scheme.

**"Building"** means the building incorporating the Lot to be built within or on the Parcel. The building is a proposed building in the Development and is proposed to include residential apartments and a small retail/commercial lot.

**"Building Management Statements"** means building management statement number 710148022 as amended by amendment number 714430919 (known as the Portside Wharf BMS) and building management statement number 710148143 as amended by amendment number 713625938 (known as the Mixed Use BMS), as further amended from time to time.

**"Business Day"** means any week day which is not a public holiday in Brisbane.

**"Buyer's Agent"** means any agent authorised to act for the Buyer in relation to this Contract including its formation.

**"Buyer's Solicitor"** means the Buyer's Solicitor named in the Reference Schedule and includes any other solicitor notice of which is given as acting for the Buyer.

**"By-laws"** means the by-laws of the Principal Scheme and/or the Subsidiary Scheme (as the context requires) as amended from time to time.

**"Chattels"** means the chattels listed in the Specifications, intended for inclusion in the Property.

**"Claim"** includes any claim, cause of action, proceeding, right, entitlement, liability or demand however it arises and whether it is past, present or future, fixed or unascertained, actual, potential or contingent.

**"Committee"** means the committee of the Principal Body Corporate or the Subsidiary Body Corporate (as the context requires).

**"Common Property"** means the common property of the Principal Scheme and/or the Subsidiary Scheme (as the context requires) (and includes, where the context requires, areas of Common Property or body corporate assets which have been allocated pursuant to exclusive use by-laws for exclusive use of the lots in the Principal Scheme or the Subsidiary Scheme).

**"Common Property Defect"** means omissions and defects in the construction of the:

- (a) Common Property for the Subsidiary Scheme; or
- (b) Common Property of the Principal Scheme which has been added (if any) when the Principal Scheme is changed by the addition of the Subsidiary Scheme.

**"Conditions Subsequent"** means the conditions set out in the clause titled "Conditions Subsequent".

**"Contract Rate"** means the Contract Rate prescribed by the Queensland Law Society Inc.

**"Costs"** means any cost, charge, expense, outgoing, payment, liability or other expenditure of any nature including legal fees.

**"Defects"** means omissions and defects in the construction of the Lot.

**"Deposit"** means the Total Deposit (which comprises, where the context requires, the Initial Deposit and the Balance Deposit) shown in the Reference Schedule.

**"Deposit Bond"** means a bond, guarantee or other surety (however categorised) that is:

- (a) from an insurance company or other financial institution acceptable to the Seller;
- (b) in a form acceptable to the Seller;
- (c) for an amount equal to the Deposit; and
- (d) payable on demand.

**"Developer"** means any entity carrying out the Development or any part of it (but not the Subsidiary Scheme) from time to time.

**"Development"** means the mixed use residential, retail and commercial development which includes the wharf for the operation of the Brisbane Cruise Ship Terminal (which will include the Subsidiary Scheme) known as "Portside Wharf" which has been partially carried out (subject to Variations in accordance with the Contract Terms).

**"Development Overview"** means the overview of the Development contained in the Disclosure Documents.

**"Disclosure Documents"** means the documents titled "Disclosure Documents" or similar given or delivered to the Buyer before signing this Contract, including the Statutory Disclosure Statements and other documents and materials relevant to the Development, the Principal Scheme, the Subsidiary Scheme, the Building, the Property, the Principal Body Corporate and the Subsidiary Body Corporate.

**"Essential Term"** means a term of this Contract which is specified to be an "Essential Term" and any other term of this Contract that a court finds to be essential.

**"EU Areas"** means all areas of Common Property or Subsidiary Body Corporate assets to be allocated for the exclusive use of (occupiers of) the Lot for a purpose specified in the exclusive use By-law.

**"Exclusive Use Allocation Plan"** means the draft plan(s) attached to the Proposed Subsidiary CMS used to identify the possible location of areas of Common Property or body corporate assets to be allocated for exclusive use of lots within the Subsidiary Scheme such as parking spaces (if any), bicycle parks (if any) and storage areas (if any).

**"Expert"** means an expert nominated by either the President of the Queensland Master Builders Association or a similar association determined by the Seller, such request for nomination to be made by the Seller.

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

**"Floor Layout Plan"** means the plan attached as part of this Contract which shows the intended internal layout of the Lot (subject to Variations in accordance with the Contract Terms).

**"Foreign Interest"** means any person within the definition of "foreign person" in Section 21A of FATA or any person who is a "person to whom this section applies" in terms of Section 26A of FATA.

**"GST"** means goods and services tax payable under the GST Law.

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

**"Guarantee"** means the Deed of Guarantee and Indemnity accompanying this Contract document.

**"Identification Plan"** means the plan(s) contained in the Disclosure Documents used in order to identify the Lot.

**"Information Sheet"** means the information sheet required by Section 213 of the BCCM Act (BCCM Form 14).

**"Interest"** means any interest earned on the investment of a cash Deposit (if any).

**"Keys"** means the keys, codes or devices in the Seller's possession or control for locks and security systems required to gain access to the Property.

**"Latest Date"** means 30 June 2015.

**"Lawyer's Certificate"** means a lawyer's certificate given under Section 369A of the PAMD Act which has the effect of waiving the cooling off period applicable to this Contract.

**"Local Government"** means the Brisbane City Council, the Urban Land Development Authority and/or Economic Development Queensland or similar entity if the context or circumstances require.

**"Lot"** means the proposed lot in the Subsidiary Scheme which is sold under this Contract which is further described in the Reference Schedule.

**"Lot Entitlement"** means the contribution and/or interest entitlement (as the context requires) of:

- (a) a lot in the Subsidiary Scheme as specified in the Subsidiary CMS; and/or
- (b) a lot or subsidiary body corporate in the Principal Scheme as specified in the Principal CMS.

**"LSA"** means the *Land Sales Act 1984 (Qld)*.

**"Name"** means the intended name of the Subsidiary Scheme being "Proximity Hamilton".

**"Object"** means to object generally and includes to:

- (a) object to a change, variation, reduction, omission or substitution;
- (b) object to Title;
- (c) avoid or attempt to avoid this Contract;
- (d) refuse to effect Settlement;
- (e) delay Settlement;
- (f) make any Claim including a claim for compensation or any reduction in the Price;
- (g) retain any part of the Price;
- (h) require the Seller to carry out any works to the Property;
- (i) withhold a consent; or
- (j) seek an injunction.

**"Occupation Authority"** has the same meaning as in the Regulation Module.

**"Outgoings"** means:

- (a) rates, charges or levies on the Parcel, the Scheme Land or the Lot by any Authority (including Local Government rates, water charges, fire service levies etc);
- (b) land tax;
- (c) Subsidiary Body Corporate levies; and
- (d) Principal Body Corporate and Subsidiary Body Corporate insurance paid by the Seller as required under the BCCM Act or building insurance paid by the Seller under the Building Management Statements.

**"PAMD Act"** means the *Property Agents and Motor Dealers Act 2000 (Qld)*.

**"Parcel"** means the land as described in the Disclosure Documents as the "Parcel" and any additional adjoining or nearby land acquired by the Seller over which the Seller acquires rights



for development as part of the Subsidiary Scheme and where the context permits, includes any land derived from the Parcel. The Scheme Land is part of or will be created from the Parcel.

**"Parties"** means the Seller and Buyer.

**"Party"** means the Seller or the Buyer as the context requires.

**"Permitted Variation"** means a Variation which, viewed objectively, does not have a material adverse effect on the use or value of the Property and which does not result in the Property being substantially different to that described in this Contract or as shown in the Disclosure Documents.

**"Plan"** means the survey plan to be registered pursuant to the *Land Title Act 1994 (Qld)* which creates the Title.

**"Power of Attorney"** means the appointment of the Seller (and its representatives) by the Buyer as the Buyer's attorney pursuant to the clause titled "Power of Attorney".

**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)*.

**"PPS Release"** means a document or a copy of a document (which may be a letter) signed by a Secured Party giving a release of its Security Interest for the Sold Property.

**"PPSR"** means the register kept pursuant to the PPSA.

**"Principal Body Corporate"** means the body corporate of the Principal Scheme.

**"Principal Body Corporate Agreements"** means any agreement entered into or to be entered into by the Principal Body Corporate in relation to the Principal Scheme including in relation to the engagement of a body corporate manager or service contractor or the authorisation of a letting agent, the identification of some of which are set out in the Development Overview.

**"Principal CMS"** means the existing community management statement for the Principal Scheme.

**"Principal Scheme"** means the "Portside Wharf Principal" community titles scheme 36407. As set out in the Development

Overview, the Principal Scheme is a principal scheme of a layered arrangement of body corporates for the purposes of and under the BCCM Act with the Subsidiary Scheme being one of the subsidiary schemes of that layered arrangement.

**"Project Manager"** means any project manager appointed by the Seller for the Subsidiary Scheme from time to time. If no project manager is appointed, then the architect for the Subsidiary Scheme.

**"Promotional Materials"** means all published marketing materials (including website), models, artists impressions and display boards produced by and bearing the authority of the Seller in relation to the Subsidiary Scheme.

**"Proposed Subsidiary CMS"** means the proposed community management statement for the Subsidiary Scheme included in the Disclosure Documents

**"Proposed Lot Entitlement"** means the proposed contribution and/or interest entitlement (as the context requires) of a proposed lot in the Subsidiary Scheme as shown in the Proposed Subsidiary CMS.

**"Regulation Module"** means the regulation module under the BCCM Act which applies or is proposed to apply to the Subsidiary Scheme and the Principal Scheme.

**"Scheme Land"** means the Scheme Land as described in the Disclosure Documents which is to be subdivided to create the Subsidiary Scheme.

**"Section 21 Statement"** means the statement required under Section 21 of the LSA contained in the Disclosure Documents.

**"Section 213 Statement"** means the disclosure statement required under Section 213 of the BCCM Act contained in the Disclosure Documents.

**"Secured Party"** means the holder of a Security Interest.

**"Security Interest"** has the meaning given in the PPSA.

**"Seller's Agent"** means any agent authorised to act for the Seller in relation to this Contract including its formation.

**"Settlement"** means the event of settlement of this Contract.

**"Settlement Date"** means the date on which Settlement is to take place determined in accordance with the clause titled "Settlement Date".

**"Settlement Materials"** means all releases, withdrawals, documents, certificates, declarations, notices, instruments, materials or letters or similar which the Seller is required to provide or deliver to the Buyer at Settlement.

**"Settlement Statement"** means a statement which outlines or lists:

- (a) the calculation of the Balance Price payable by the Buyer to the Seller at Settlement (including details of adjustments to the Price for the Deposit paid, Outgoings and other amounts payable by the Parties under this Contract);
- (b) directions as to payment of the Balance Price by Bank Cheques (and/or trust cheques if authorised by the Seller);
- (c) Settlement Materials; and
- (d) any other particulars the Seller considers appropriate.

**"Shared Facilities"** means those parts of the Development which by virtue of them being Common Property or under a shared facilities agreement (or similar arrangement) or under the Building Management Statements which already exist or come into existence as a result of the carrying out of other stages of the Development, are for the shared use and enjoyment of more than one owner in the Development and their guests and invitees, if applicable.

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

**"Special Conditions"** means the special conditions (if any) annexed to or forming part of this Contract.

**"Specifications"** means the specifications included in the Disclosure Documents and any items forming part of a furniture package (if any) sold under or collateral to this Contract.

**"Statutory Disclosure Statements"** means the statutory disclosure statements contained in the Disclosure Documents including the Section 213 Statement and the Section 21 Statement.

**"Statutory Obligation"** means any obligation, duty, liability, direction or requirement imposed by any statute, ordinance, regulation, by-law or subordinate legislation.

**"Subsidiary Body Corporate"** means the body corporate of the Subsidiary Scheme.

**"Subsidiary Body Corporate Agreements"** means the following proposed agreements in relation to the Subsidiary Scheme, draft copies of which are contained in the Disclosure Documents:

- (a) a body corporate manager's agreement between the Subsidiary Body Corporate and a body corporate administration company;
- (b) the Subsidiary Management Engagement & Letting Authorisation Agreement;
- (c) an agreement between the Subsidiary Body Corporate and a provider of utility services and utility infrastructure;
- (d) an agreement between the Subsidiary Body Corporate and Queensland Fire and Rescue Service for alarm monitoring services;
- (e) an agreement between the Subsidiary Body Corporate and Energex Limited for electricity connection services; and
- (f) an agreement between the Subsidiary Body Corporate and BuildingLinkInternational Pty Ltd for a subscription to web based services to facilitate building communication.

**"Subsidiary Management Engagement & Letting Authorisation Agreement"** means a management engagement & letting authorisation agreement between the Subsidiary Body Corporate and a manager for the Subsidiary Scheme.

**"Subsidiary CMS"** means the community management statement recorded in order to establish the Subsidiary Scheme.

"**Subsidiary Scheme**" means the "Proximity Hamilton" community titles scheme to be established upon recording of the Subsidiary CMS and registration of the Plan by the Seller for the Scheme Land. As set out in the Development Overview, the Subsidiary Scheme is proposed to be a subsidiary scheme as part of a layered arrangement of body corporates for the purposes of and under the BCCM Act with the Principal Scheme being the principal scheme of that layered arrangement.

"**Sunset Date**" means that date which is 3 ½ years after the Contract Date.

"**Title**" means the title to the Lot.

"**Transfer Documents**" means:

- (a) A Form 1 Transfer under the *Land Title Act 1994 (Qld)*; and
- (b) A Form 24 Property Transfer Information (Part B – Transferor to complete) form.

(If before Settlement the Queensland Land Registry changes their requirements of or the form of the Transfer Documents, then the definition of Transfer Documents will be deemed to be amended to give effect to the intent of this Contract to provide for the then equivalent forms and documents as determined by the Seller's Solicitors acting reasonably).

"**Variations**" means changes, variations, reductions, omissions, substitutions and/or additions to (as the context requires) the Development, the Principal Scheme, the Subsidiary Scheme, the Building, the Shared Facilities, the Common Property, the body corporate assets and/or the Property including changes, variations, omissions and/or additions to any one or more of the above which are in respect of the:

- (a) titling arrangements;
- (b) administration and management arrangements;
- (c) utility infrastructure and supply arrangements;
- (d) method of construction;
- (e) construction materials;
- (f) number of levels (including basement levels) within the Building or other buildings within the Development;

- (g) number of lots within the Subsidiary Scheme or any other scheme proposed to be a subsidiary of the Principal Scheme;
- (h) number of subsidiary schemes within or proposed to be within the Principal Scheme;
- (i) omission or reduction of an entire subsidiary scheme or building within the Development or the Principal Scheme;
- (j) facilities;
- (k) access arrangements;
- (l) landscaping;
- (m) composition;
- (n) density;
- (o) mix of uses;
- (p) design;
- (q) ceiling heights;
- (r) location;
- (s) layout;
- (t) size;
- (u) dimensions;
- (v) area;
- (w) finishes;
- (x) Chattels;
- (y) colours;
- (z) components which comprise the Development, the Principal Scheme and/or the Subsidiary Scheme;
- (aa) community facilities within the Development, the Principal Scheme and/or the Subsidiary Scheme;
- (bb) descriptions or identification numbers of lots, units, levels, plans, exclusive use areas or assets; and
- (cc) addresses – street names and numbers.

"**Warning Statement**" means the warning statement required by Chapter 11 of the PAMD Act (PAMD Form 30c).

**B. AGREEMENT TO SELL & BUY**

**5. Seller's Agreement to Sell**

The Seller agrees to sell the Property to the Buyer on the terms set out in this Contract.

**6. Buyer's Agreement to Buy**

The Buyer agrees to buy the Property from the Seller on the terms set out in this Contract.

**C. SELLER'S CONDITIONS**

**7. Conditions Subsequent**

Settlement of this Contract is subject to the Seller satisfying the following Conditions Subsequent on or before the Sunset Date:

- (a) the Seller obtaining all necessary Authority approvals for the Subsidiary Scheme;
- (b) construction of the Property being substantially complete;
- (c) recording of the Subsidiary CMS under the BCCM Act;
- (d) registration of the Plan; and
- (e) issue of a certificate of classification (or equivalent) under the Building Code of Australia (or equivalent) for that part or parts of the Building within which the Property is situated.

**8. No Waiver of Conditions Subsequent**

The Seller cannot waive compliance with any of the Conditions Subsequent.

**9. Unreasonable Conditions**

If an Authority refuses to grant or revokes a necessary permit or approval, or refuses to seal the Subsidiary CMS or the Plan or imposes conditions on a permit, certificate or approval which the Seller is, acting in the circumstances reasonably, unwilling to comply with, then the Seller may terminate this Contract by notice to the Buyer. If this happens:

- (a) the Deposit and Interest must be released to the Buyer; and

- (b) the Buyer has no further Claim against the Seller.

**10. Delays to Satisfy Conditions Subsequent**

If the failure to satisfy the Conditions Subsequent by the Sunset Date is due to delays attributable to:

- (a) damage by flooding, water, fire, explosion, earthquake, lightning, storm, any other act of nature or war, civil commotion or act of terror;
- (b) legal proceedings concerning the Parcel, Scheme Land, Development, Principal Scheme or Subsidiary Scheme;
- (c) delay of any Authority in issuing a necessary approval or permit;
- (d) inclement weather;
- (e) unavailability of materials or contractors for the building of the Building or other necessary parts of the Development;
- (f) industrial dispute or disturbance of any kind;
- (g) delay in construction by a builder of the improvements within the Principal Scheme, the Subsidiary Scheme or the Development;
- (h) delay in securing sufficient pre-sale of lots to enable the Seller to secure funding for construction; or
- (i) any other cause beyond the control of the Seller,

then the Seller may extend the Sunset Date by a period equal to the period of the delay. Certification by the Project Manager as to the causes and period of delay is final and binding on the Parties. The Project Manager must be directed by the Seller to act impartially in giving the certification.

**11. Failure to Satisfy Conditions Subsequent**

- 11.1 If the Conditions Subsequent are not satisfied by the Sunset Date (as extended) then either Party may terminate this Contract by notice to the other. If this happens:

- (a) the Deposit and Interest must be released to the Buyer; and
- (b) the Buyer has no further Claim against the Seller.

11.2 Nothing in this Contract prohibits the Parties extending the date by which the Conditions Subsequent must be satisfied by mutual agreement.

## 12. Seller's Condition – Latest Date

12.1 At any time up to and including the Latest Date, the Seller may, by notice to the Buyer, terminate this Contract if the Seller decides, in its sole discretion, that the development of the Subsidiary Scheme is not to proceed for any bona fide reason, including, and by way of example only, that:

- (a) the Seller is of the view that it will not obtain funding to enable the construction of the Subsidiary Scheme on terms and conditions satisfactory to the Seller;
- (b) insufficient sales of proposed lots in the Subsidiary Scheme have been effected during the period up to the Latest Date;
- (c) projections for sales of proposed lots in the Subsidiary Scheme for the period after the Latest Date are insufficient; or
- (d) the Seller is of the view it may not be able to satisfy the Conditions Subsequent by the Sunset Date.

12.2 On termination under this clause:

- (a) the Deposit and Interest must be released to the Buyer; and
- (b) the Buyer has no further Claim against the Seller.

12.3 The Seller may waive the benefit of this clause at any time. The Seller is taken to have waived the benefit of this clause if the Seller has not terminated this Contract by the Latest Date.

12.4 The Seller may not rely on its rights under this clause to terminate this Contract for improper purposes, for example, because the Seller wishes to sell the Property to a third party for an amount which is more than the Price.

12.5 If this Contract is entered into after the Latest Date, then this clause does not apply.

## D. THE DEVELOPMENT, PRINCIPAL SCHEME AND SUBSIDIARY SCHEME

### 13. Variations to Development, Principal Scheme and Subsidiary Scheme

13.1 The Buyer acknowledges that:

- (a) the Seller has made disclosure to it about the Development, the Principal Scheme and the Subsidiary Scheme in the Disclosure Documents and the Promotional Materials in respect of the intentions of the Seller and the Developer (so far as the Seller is aware) for the carrying out of the Development, the Principal Scheme and the Subsidiary Scheme as at or about the Contract Date;
- (b) the Development and the Principal Scheme are being developed progressively and may be subject to Variations for various reasons including determinations of the Developer, requirements of Authorities, financial feasibilities, construction costs, market conditions, rates of sale of lots, etc (which may occur after Settlement);
- (c) all components of the Development or the Principal Scheme (including future stages and community facilities of the Development) may not be developed or may be subject to significant Variations for various reasons including those specified in sub-clause (b); and
- (d) the Seller has made specific disclosure to the Buyer that the number of subsidiary schemes in the Principal Scheme (stages of the Development) may vary for various reasons including those specified in sub-clause (b).

13.2 The Buyer acknowledges that the Developer is entitled to make Variations to the carrying out of the Development and the Principal Scheme (including community facilities) as determined by the Developer in its discretion. The Buyer will not Object because of any such Variations.

13.3 The Seller is entitled to make Variations to the carrying out of the Subsidiary Scheme as determined by the Seller in its discretion. The

Buyer will not Object because of any such Variations providing they do not:

- (a) materially detract from the character or standard of the Subsidiary Scheme; or
- (b) have a direct material adverse effect on the use or the value of the Property.

13.4 The Buyer must not Object about any of the matters acknowledged by the Buyer in sub-clause 1.

#### 14. Operation of Development

14.1 The Buyer acknowledges that:

- (a) the Lot and the Building will form part of the Development;
- (b) the Development, as at the time the Buyer signs this Contract, includes a mix of residential, retail and commercial uses;
- (c) the range of uses in the Development includes restaurants and other retail outlets which operate or undertake delivery of produce and stock outside normal business hours;
- (d) the Development includes a passenger wharf associated with the Brisbane Cruise Ship Terminal, the operation of which may interfere with the quiet use and enjoyment of the Property, further particulars of which are set out in the Development Overview;
- (e) the Development may be used for all or any of the uses disclosed to the Buyer in the Disclosure Documents and the Promotional Materials and any additional uses which may be permitted or required by any Authority from time to time or otherwise determined by the Developer; and
- (f) 24 hour public access is permitted over certain components of the Development (including Shared Facilities) such as roadways, driveways, carpark areas and thoroughfare areas.

14.2 The Buyer:

- (a) buys the Property with full knowledge of the mix of uses, potential uses, restrictions, arrangements and other

matters referred to in this clause and the Disclosure Documents; and

- (b) must not in any way Object to those things or the interruption of the Buyer's quiet use and enjoyment of the Property by members of the public, noise, nuisance or other inconvenience which might arise from them.

14.3 The Seller does not make any promise or representation to the Buyer as to the type of operators that operate or will operate from any retail or commercial components of the Development, the hours during which those operators will operate or when the operators will commence trading from those components of the Development. The Developer and individual operators are entitled, in their total discretion, to decide these matters. The Buyer will not Object in relation to any of these things.

#### 15. Construction Activities

15.1 The Buyer acknowledges that construction of:

- (a) certain components of the Common Property may not be totally complete at Settlement and may be completed after Settlement; and
- (b) the Development will be carried out in stages and may occur over an extended period of time.

15.2 The Buyer will not Object to:

- (a) any building of improvements or any other things done on the Common Property or within the Development including any noise, nuisance or other inconvenience which might arise from those activities;
- (b) the use by the Seller or the Developer and any party authorised by them of parts of the Development for construction access and storage of building materials, vehicles, equipment or fill; and
- (c) the Seller, the Developer and any party authorised by them causing Shared Facilities (including areas which are Common Property) to be temporarily closed off to facilitate the construction of the Development,

including if these things occur after Settlement and/or for an extended period after Settlement.

15.3 The Buyer must comply with any reasonable directions of the Seller or the Developer and any contractor appointed by them while building of improvements is being carried out within the Development, including directions related to traffic flow, both vehicle and pedestrian.

15.4 For avoidance of doubt, this clause is for the benefit of each party comprising the Seller and the Developer. Subject to the clause titled "Staged Settlements", in exercising its rights under this clause, the Seller must use reasonable endeavours to prevent undue interference with the Buyer's enjoyment of the Property and the Common Property and the Shared Facilities.

#### **16. Buyer's Consent – Further Development**

16.1 The Buyer consents to any application for any approval made to any Authority for the further carrying out of the Development, including carrying out of the Development in stages providing such application is for an approval which, if granted and given effect to, will not have a direct material adverse effect on the use of the Property or the value of the Property and agrees, if directed by the Seller or the Developer:

- (a) to sign and return any instrument of consent presented to it by the Seller within 5 Business Days after presentation; and
- (b) to vote in favour of any resolution of the Principal Body Corporate or Subsidiary Body Corporate which facilitates, enables or authorises the further carrying out of the Principal Scheme, the Subsidiary Scheme and/or Development by the Seller or the Developer as tabled by, on or behalf of or at the request of the Seller or the Developer at meetings of the Principal Body Corporate and/or Subsidiary Body Corporate.

16.2 The Buyer will not in any way Object to any application for any approval made with any Authority for the further carrying out of the Principal Scheme, the Subsidiary Scheme and/or Development providing such application is for an approval which, if granted and given effect to, will not have a direct material adverse effect on the use of the Property or the value of the Property.

16.3 The Buyer agrees that, until the Development is carried out, the Buyer must not transfer the Lot except to a transferee who has first agreed:

- (a) to itself be bound by; and
- (b) not to further transfer the Lot unless it procures an agreement by that further transferee to be bound by,

the conditions and matters contained in this clause.

#### **17. Approvals**

17.1 The Seller must use its reasonable endeavours to:

- (a) obtain all necessary Authority approvals for the Subsidiary Scheme; and
- (b) procure the issue of all relevant certificates and permits necessary to allow legal occupancy of the Property.

17.2 The registration of the Plan and the issue of a certificate of classification (or equivalent) for that part or parts of the Building within which the Property is situated is sufficient proof that:

- (a) the approvals, certificates and permits have been obtained; and
- (b) the Conditions Subsequent about obtaining all necessary approvals for the Subsidiary Scheme, registration of the Plan, recording of the Subsidiary CMS and the issue of a certificate of classification have been satisfied.

#### **E. THE BUILDING & THE PROPERTY**

##### **18. Construction Standards**

The Seller will cause the Building, including the Lot, to be built substantially in accordance with the Identification Plan, the Floor Layout Plan and the Specifications, in a good and workmanlike manner and in accordance with applicable laws, regulations and standards.

**19. Variations to Building & Common Property**

The Seller is entitled to (and the Buyer acknowledges that the Developer may in relation to Common Property of the Principal Scheme) make Variations to the Building and the Common Property as determined by the Seller in its absolute discretion. The Buyer will not Object because of such Variations providing they do not:

- (a) materially detract from the character or standard of the Building or Common Property; or
- (b) have a direct material adverse effect on the use of the Lot or the value of the Property.

**20. Variations to Property:**

**20.1 The Buyer agrees that:**

- (a) as the Property is sold "off the plan", there are likely to be discrepancies between the Property as shown or described in the Floor Layout Plan, Promotional Materials and the Disclosure Documents and the Property as built; and
- (b) the Seller has made no promise or representation that the Property as built will be exactly the same as shown or described in the Floor Layout Plan, Promotional Materials or the Disclosure Documents or if any such promise or representation has been made, it is hereby withdrawn by the Seller.

**20.2 The Buyer:**

- (a) represents and warrants to the Seller that:
  - (i) the matters referred to in sub-clause 1(b) are true; and
  - (ii) the Buyer has not relied on any such matter in making a decision to enter into this Contract or to purchase the Property; and
- (b) acknowledges and understands that the Seller has relied on the matters in sub-clause 2(a) in making the decision to enter into this Contract and to sell the Property to the Buyer and that the Seller would not have done so but for the assurance provided by sub-clause 2(a).

**20.3** The Seller is entitled to make Variations to the Property (which includes the Lot). The Buyer will not Object to any Variations to the Property providing the Variations are a Permitted Variation.

**20.4** Each Variation of the Property is to be considered separately in determining if the Variation is a Permitted Variation. The Parties agree that regard will not be had to the aggregate effect of more than one Variation, in making a determination as to whether a Variation is or is not a Permitted Variation.

**20.5** Without limitation to what may constitute a Permitted Variation, a Variation in the size of the Lot as shown on the Plan and that identified on the Identification Plan will be deemed to be a Permitted Variation, unless the difference in size is greater than 5%.

**20.6** If there is an inconsistency or discrepancy in respect of:

- (a) the Lot; or
- (b) the Chattels, materials, fixtures, fittings, finishes and colours to be supplied in it,

as shown, illustrated or set out in the Identification Plan, the Floor Layout Plan, the Specifications and/or the Promotional Materials, the Parties agree that the inconsistency or discrepancy will be resolved (without limiting the Seller's rights under this Contract to make Variations) by reference to the following descending order of precedence:

- (a) firstly, the Identification Plan; then
- (b) the Specifications; then
- (c) the Floor Layout Plan; then
- (d) lastly, the Promotional Materials.

For example, if the area of the Lot is shown in the Identification Plan as being 100m<sup>2</sup> and on any draft plan in the Promotional Materials as 110m<sup>2</sup> then the Identification Plan will prevail and the area of the Lot will be taken to be 100m<sup>2</sup>.

**21. Variations to Chattels and Finishes**

**21.1** The Seller may, in its total discretion, substitute or vary Chattels, materials, fixtures, fittings, finishes and colours described or shown in the Floor Layout Plan or Specifications or shown in any display apartment, display board, colour



scheme board or shown in any Promotional Materials (including any items included in any furniture package sold under or collateral to this Contract) with other colours and similar chattels, materials, fixtures, fittings or finishes provided that:

- (a) the substituted items are of approximate equivalent quality or superior quality; or
- (b) if the substituted items are of less than approximate equivalent quality, the Buyer is not materially prejudiced as a result of the substitution.

21.2 The Seller may, in its absolute discretion, omit any Chattels, materials, fixtures or fittings described or shown in the Floor Layout Plan or Specifications or shown in any display apartment, display board or shown in any Promotional Materials (including any items included in any furniture package sold under or collateral to this Contract) providing that the omission does not materially prejudice the Buyer.

21.3 If the Buyer is materially prejudiced as a result of a substitution referred to in sub-clause 1(b) or an omission referred to in sub-clause 2, the Buyer cannot Object other than to claim compensation from the Seller which claim will be for an amount no greater than the reduction in value (if any) of the Property occurring as a result of the substitution or omission. Any such claim for compensation must be lodged in writing with the Seller before the earlier of:

- (a) the date 1 Business Day prior to the date which is (first) fixed as the Settlement Date; or
- (b) the day 30 days after the Seller gives notice to the Buyer that the substitution or omission (as the case may be) has been made or is intended to be made,

failing which the Seller will not be obligated to consider it or pay compensation.

21.4 The Buyer agrees that, notwithstanding any description of the balustrade or balcony finish in respect of the Lot specified in the Specifications or shown in the Disclosure Documents, Promotional Materials or elsewhere, the Buyer is not entitled to Object if the Seller changes or varies the finish of the balustrade or balcony in respect of the Lot.

## 22. Variations to EU Areas

22.1 This clause applies in respect of all EU Areas (if any) intended to comprise part of the Property.

22.2 The Buyer acknowledges and agrees that:

- (a) notwithstanding any location, dimensions or description of EU Areas which may be set out in this Contract, the Disclosure Documents or the Promotional Materials, such location, dimensions or description are not essential terms of this Contract;
- (b) prior to entry into this Contract, the Buyer was given the opportunity to negotiate the terms of this Contract and to specify any aspect of the location, dimensions or description of the EU Areas which are material to the Buyer;
- (c) the Seller may, in its absolute discretion, make Variations to any EU Areas provided:
  - (i) in the case of a parking area, that the Buyer receives the benefit of a parking area in which an average sedan motor vehicle can be parked (unless the Buyer has purchased a "small car space" or similar in which case the obligation of the Seller is to ensure the Buyer receives an alternate "small car space" or a parking area in which an average sedan motor vehicle can be parked);
  - (ii) in the case of a storage area, that the Buyer receives the benefit of a storage area or areas which is or are more or less similar in total size to the area previously proposed to have been allocated for the exclusive use of the Lot; and
  - (iii) in all other cases, that the Variation is a Permitted Variation.
- (d) the Seller may, in its absolute discretion, determine and change the access arrangements as between the Lot as built and any relevant EU Areas, including by effecting a shuttle lift arrangement between the basement EU Areas and the entry foyer of the Building with a second lift arrangement between the foyer and the floor of the Building on which the Lot is situated.

22.3 The Buyer must not Object to the Seller exercising its discretion to make Variations permitted under this clause.

22.4 The Buyer acknowledges that the structural design of the podium structure which forms part of the Building and which may include parking areas, storage areas and bicycle parks for the Subsidiary Scheme may not be finalised as at the Buyer's entry into this Contract. The structural design may necessitate the installation of columns, walls and other structural elements next to or partially within a parking area or bicycle park or within a storage area which may interfere with the convenient use of the parking area, bicycle park or storage area. The Buyer must not Object to any such installation.

**23. Rights of Buyer if Buyer entitled to Object to Variation**

23.1 This clause applies if the Buyer is entitled to Object to a Variation pursuant to the Contract Terms.

23.2 If this clause applies:

- (a) the Buyer must not Object other than as set out in this clause; and
- (b) the Buyer may give notice to the Seller claiming compensation as a result of the Variation ("Compensation Notice"), such notice to be given before the earlier of:
  - (i) the date 1 Business Day prior to the date which is (first) fixed as the Settlement Date; or
  - (ii) the date 30 days after the Seller gives notice to the Buyer that the Variation has been made or is intended to be made,

failing which the Seller is not obligated to consider it or pay compensation. The amount of any claim for compensation made by the Buyer under this clause must be limited to an amount no greater than the reduction in value (if any) of the Property occurring as a result of the Variation.

23.3 If the Buyer gives a Compensation Notice, the Seller may, within 10 Business Days after receipt of the Compensation Notice, give notice to the Buyer that the Seller either:

- (a) accepts the Buyer's claim for compensation set out in the Compensation Notice; or
- (b) terminates this Contract, in which case this Contract is at an end, the Deposit

and Interest must be refunded to the Buyer and the Buyer will have no further Claim against the Seller arising out of the subject matter of this Contract; or

- (c) requires a valuer to determine the amount of compensation payable to the Buyer ("Valuer Notice").

23.4 If the Seller gives a Valuer Notice:

- (a) the Parties must use their best endeavours to agree a valuer to determine the compensation within 5 Business Days and, failing agreement, the valuer will be nominated by the President for the time being of the Queensland Law Society Incorporated (or their nominee) following request by either Party;
- (b) the valuer will be instructed to determine the amount of the compensation:
  - (i) based on the reduction in value (if any) of the Property occurring as a result of the Variation; and
  - (ii) within a reasonable time and, in any event, within 10 Business Days;
- (c) the determination of the valuer as to the quantum of compensation is final and binding on the Parties and is the only compensation payable by the Seller; and
- (d) the costs of the valuer must be paid equally by the Parties.

23.5 If the Buyer gives a Compensation Notice, the Settlement Date is the later of:

- (a) the Settlement Date calculated in accordance with the clause titled "Settlement Date"; and
- (b) the date 5 Business Days after the measure of compensation is accepted by the Seller or determined by a valuer (as the case may be).

23.6 Any compensation payable by the Seller to the Buyer is payable at, and is conditional upon, Settlement.

## 24. Chattels

- 24.1 On Settlement, the Lot will contain the Chattels.
- 24.2 Ownership of the Chattels will pass to the Buyer on Settlement. This is an Essential Term.
- 24.3 Any furniture shown on any floor layout plan of the Lot showing suggested furniture layout does not in any way mean that the furniture is sold by the Seller to the Buyer under this Contract. If furniture is sold, it must be specifically provided for in the Special Conditions or in a separate agreement.

- (a) in making a determination, acts as an expert;
- (b) must be asked by the Seller to notify the Parties in writing of its determination of whether or not the issue or matter referred to the Expert for determination is a Common Property Defect; and
- (c) must be asked by the Seller to determine the issue or matter within a reasonable time of being referred the issue or matter for determination.

The determination of the Expert is final and binding on the Parties. The Parties must pay the costs of the Expert in equal shares.

## F. COMMON PROPERTY DEFECTS & DEFECTS

### 25. Common Property Finishes

All Common Property finishes and landscaping will be determined by the Seller in its discretion (or possibly the Developer in respect of additional Common Property of the Principal Scheme), but will be generally to a standard but not necessarily the same design as the finishes and landscaping proposed for the Common Property as set out in the Disclosure Documents and the Promotional Materials.

- 26.3 The Seller must cause to be completed or fixed each Common Property Defect:

- (a) within a reasonable time after notification by the Buyer of the Common Property Defect unless any issue or matter is disputed by the Seller; and
- (b) within a reasonable time after the determination by the Expert that an issue or a matter is a Common Property Defect.

### 26. Common Property Defects

- 26.1 The Buyer will not Object to:

- (a) any Common Property Defects, but must rely on its right under this clause about completion or fixing of Common Property Defects; or
- (b) the continuation of building and associated works to the Common Property and within the Building or Development after Settlement.

- 26.4 The Seller is not required to fix:

- (a) scratches, chips, dents or marks on any Common Property surface, covering or item which have been caused through normal fair wear and tear;
- (b) concrete, slabs, driveways, terraces, tiled areas or other exposed surfaces that are part of the Common Property which develop cracks or other damage due to temperature change or normal settlement or fair wear and tear;
- (c) defects in Common Property of the Principal Scheme which is not a Common Property Defect (on the basis that the Principal Body Corporate will be responsible, at the relevant time, for the maintenance of the Common Property of the Principal Scheme).

- 26.2 The Seller will cause to be fixed any Common Property Defect that is notified by the Buyer to the Seller within 3 months after Settlement. If the Seller disputes whether an issue or matter notified as a Common Property Defect is an issue or matter which requires completion or fixing, the Seller must, within 20 Business Days, refer the issue or matter to the Expert for determination. When referring the issue or matter to the Expert for determination, the Seller must ask the Expert to act as an impartial expert in making the determination. The Expert:

## 27. Lot Inspection & Defect Fixing

27.1 When the Seller is of the opinion that the construction of the Lot is substantially complete, except for omissions and defects which are unlikely to prejudice the convenient use of the Lot, the Seller must give notice to the Buyer that the Lot is available for inspection ("Inspection Notice").

27.2 Within 14 days after receiving an Inspection Notice, or in any case before the Settlement Date, the Buyer must arrange for the Lot to be inspected by the Buyer or its representative in company with a representative of the Seller ("Pre-settlement Inspection").

27.3 During the Pre-settlement Inspection, the representative of the Seller and the Buyer must inspect the Lot for any Defects and both must complete and sign 2 copies of a certificate in a form specified by the Seller ("Inspection Certificate") that, as applicable:

- (a) confirms that the Lot is free of obvious Defects;
- (b) identifies Defects in the Lot that require completion or fixing and confirms that the Lot is otherwise free of obvious Defects;
- (c) in relation to an issue or matter for which the Parties are unsure as to whether the issue or matter is a defect, identifies the issue or matter as having to be referred to the Builder; and/or
- (d) if the Parties are unable to agree on an issue or matter, lists the issue or matter as "disputed".

27.4 If an issue or matter described in the Inspection Certificate is noted as "to be referred to the Builder", then the Seller must, within 10 Business Days, refer the issue or matter to the Builder for determination. If the Builder accepts that the issue or matter is a Defect, then the issue or matter is a Defect for the purposes of the Inspection Certificate and is to be dealt with in accordance with this clause. If the Builder does not agree that the issue or matter is a Defect, then the issue or matter is taken to be listed as "disputed" for the purposes of the Inspection Certificate and is to be referred to the Expert for determination within 10 Business Days in accordance with this clause.

27.5 If an issue or matter described in the Inspection Certificate is listed as "disputed", then the Seller must, within 20 Business Days, refer the issue or matter to the Expert for determination. When referring the issue or matter to the Expert for determination, the Seller must ask the Expert to act as an impartial expert in making the determination. The Expert:

- (a) in making a determination, acts as an expert;
- (b) must be asked by the Seller to notify the Parties in writing of its determination of whether or not the issue or matter referred to the Expert is a Defect; and
- (c) must be asked by the Seller to determine the issue or matter within a reasonable time of being referred the issue or matter for determination.

The determination of the Expert is final and binding on the Parties. The Parties must pay the costs of the Expert in equal shares.

27.6 The Seller must cause to be completed or fixed:

- (a) within a reasonable time after Settlement, all Defects described in the Inspection Certificate, except any issue or matter that is listed as disputed; and
- (b) within a reasonable time after the determination by the Expert that an issue or matter is a Defect, the issue or matter which has been determined by the Expert to be a Defect.

27.7 If the Inspection Certificate has identified a Defect in the construction of the Lot that requires completion or fixing or identified a matter that is to be referred to the Builder or the Expert, then the Buyer must rely on its rights under this clause and has no right to Object pending completion or fixing of the identified Defect.

27.8 Provided the Buyer has attended the Pre-settlement Inspection and signed the Inspection Certificate, the Seller will cause to be fixed any further Defect in the Lot that is notified by the Buyer to the Seller within 3 months after Settlement. If the Seller disputes whether an issue or matter notified as a Defect is an issue or matter which requires completion or fixing, the Seller must refer the issue or

matter to the Expert for independent determination and the provisions of sub-clause 5 will apply in relation to that determination.

- 27.9 If the Buyer fails to attend the Pre-settlement Inspection or fails to sign the Inspection Certificate at the Pre-settlement Inspection, then the Buyer must not Object to any particular of or omission in the construction of the Lot (either before or after Settlement).
- 27.10 The Seller is not required to inspect or cause to be completed or fixed any Defect unless the Buyer, at the Seller's request, provides to the Seller and any contractor nominated by the Seller suitable access to the Lot in order to enable inspection, completion and fixing works to be performed.
- 27.11 The Seller may at any time waive the requirement to carry out a Pre-settlement Inspection and the completion of an Inspection Certificate. If the Seller fails to give the Inspection Notice, the Seller is taken to have waived the requirement to carry out a Pre-settlement Inspection. If either one of these happen:
- (a) the Seller must cause to be completed or fixed any Defects in the Lot that are notified by the Buyer to the Seller within 3 months after Settlement. If the Seller disputes whether an issue or matter notified as a Defect is an issue or matter which requires completion or rectification, the Seller may refer the issue or matter to the Expert for independent determination and the provisions of sub-clause 5 will apply in relation to that determination; and
  - (b) the Buyer must rely on its rights under this clause and must not Object pending completion or fixing of Defects.
- 27.12 The Seller is not required to fix scratches, chips, dents or marks on any surface, covering or item unless they are identified in the Inspection Certificate.
- 27.13 The Buyer will not Object because of any omissions or defects to other lots in the Building or elsewhere in the Subsidiary Scheme.
- 27.14 For avoidance of doubt, the Buyer will not Object if the Buyer is not permitted to inspect any EU Areas which form part of the Property

during the Pre-settlement Inspection or otherwise before Settlement.

- 27.15 The Buyer must comply with all of the reasonable requirements and directions of the Seller (and/or its builder) about site safety and access during the Pre-settlement Inspection and any other inspections of the Property or the Subsidiary Scheme.

**28. Buyer's Acknowledgment about Finishes, Materials etc**

- 28.1 The Buyer acknowledges that:

- (a) garage doors, concrete, driveways, verandas, balconies, terraces, slabs, tiled areas and other exposed surfaces, cornices, architraves and similar areas may develop imperfections (such as cracks) due to temperature changes and normal settlement;
- (b) some of the materials used in the construction of the Lot, particularly in finishes and fittings, may comprise natural products, such as stone, timber and the like and:
  - (i) these materials may exhibit variations and imperfections such as in shade, colour, texture, surface, finish, markings or the like and may contain natural fissures, occlusions, lines, indentations or the like;
  - (ii) these materials may expand, contract or distort over time as a result of exposure to heat, cold, changes in humidity, temperature or the like;
  - (iii) these materials may mark or stain if exposed to certain substances; or
  - (iv) these materials may be damaged or disfigured by impact or scratching or other mechanical means; and
- (c) for any installed plush (cut) pile carpet a phenomenon known as "permanent pile reversal shading", also known as "watermarking" may randomly appear in the carpet creating an effect that resembles water spillage or stains due to reversal of the pile direction in the

carpet (the cause of the reversal being unknown).

- 28.2 The Buyer agrees that these kinds of matters and imperfections are not Defects and that the Seller does not have to fix those kinds of matters and imperfections. The Buyer will not Object in relation to any of the matters set out in this clause.

#### **G. DEALINGS WITH COMMON PROPERTY**

##### **29. Seller's Right to Grant Leases & Licences**

- 29.1 The Seller may, in its discretion, procure that the Subsidiary Body Corporate grant leases and licences over areas of Common Property and Subsidiary Body Corporate assets on such terms and conditions that the Seller considers appropriate, providing that the grant does not:

- (a) materially detract from the standard or character of the Subsidiary Scheme;
- (b) materially affect the use of Common Property amenities or Subsidiary Body Corporate assets within the Subsidiary Scheme by the Buyer; or
- (c) have a direct material adverse effect on the use or value of the Property.

- 29.2 The Buyer will not Object to the Seller exercising its rights to procure that the Subsidiary Body Corporate grant leases and licences over areas of Common Property or Subsidiary Body Corporate assets, even if the Seller or related entity of the Seller derives a benefit, income or fee due to a grant.

- 29.3 Without limitation, and by way of example only, the Seller may procure that the Subsidiary Body Corporate grant a lease or licence:

- (a) to the Seller or any party nominated by the Seller over an area of rooftop Common Property for the purposes of installing and keeping a telecommunications aerial device at a peppercorn or nominal rental amount. The Seller or the nominated party may then sub-lease or sub-licence (as applicable) that area to a telecommunications carrier and derive income or other benefits from doing so; or
- (b) to a utility provider over an area of Common Property being an equipment keeping room in which utility supply equipment owned by the utility provider is kept.

#### **30. Seller to Retain Fees & Payments**

- 30.1 The Parties acknowledge that the BCCM Act enables the Seller, as original owner of all lots in the Subsidiary Scheme, to cause areas of Common Property or Subsidiary Body Corporate assets to be allocated for the exclusive use of occupiers for the time being of lots in the Subsidiary Scheme. Such areas or assets are typically allocated by way of exclusive use rights instead of forming part of the Title and are for purposes such as parking spaces, bicycle parks, storage areas, courtyards and balconies. The Seller's rights as original owner to cause such allocations are captured in the By-laws which deal with exclusive use rights as required by the BCCM Act.

- 30.2 The Buyer agrees that the Seller is entitled to retain any fees or payments received by the Seller for procuring the allocation by the Subsidiary Body Corporate of the exclusive use rights in favour of any lots in the Scheme, whether allocated on or after establishment of the Subsidiary Scheme.

- 30.3 The Buyer must vote against any motion of the Subsidiary Body Corporate that the Subsidiary Body Corporate objects to or makes a Claim in relation to the Seller causing the grant of exclusive use rights. Notwithstanding Settlement, if there is a breach or anticipatory breach by the Buyer of this clause, the Seller will be entitled to all reasonable Costs incurred and all losses suffered as a result of, or arising from, the breach.

#### **H. TITLE**

##### **31. Title**

- 31.1 Title is under the BCCM Act and the *Land Title Act 1994 (Qld)*. The Buyer accepts Title subject to the provisions of these Acts.

- 31.2 The Buyer is not entitled to make any requisitions as to the Title.

- 31.3 The Buyer accepts Title and the Property subject to and must not Object as a result of any of the following matters even if they adversely affect the Common Property (all of which are authorised or permitted encumbrances or dealings for the purposes of this Contract):

- (a) the Principal CMS;
- (b) the Subsidiary CMS;

- (c) the Building Management Statements;
- (d) any building management statement given effect to during the course of carrying out the Development;
- (e) any matter endorsed upon the Plan;
- (f) any administrative advices or similar dealings;
- (g) any rights or interests reserved in favour of the Crown;
- (h) any encumbrances in favour of any Authority, the Local Government or any service authority (whether registered, unregistered or statutory);
- (i) the conditions of any approval of any Authority concerning the Property;
- (j) the By-laws;
- (k) any notifications, easements, restrictions, encumbrances, covenants or other matters or dealings disclosed to the Buyer in the Disclosure Documents;
- (l) all notifications, easements, restrictions, encumbrances and dealings (other than a mortgage, caveat, writ or charge) on the title for the Common Property or the Title or otherwise affecting the Property or the Common Property not disclosed to the Buyer in the Disclosure Documents or this Contract providing they do not materially adversely affect the Buyer's use of the Property or the value of the Property;
- (m) any easements benefiting or burdening the Title, Property, Scheme Land, Parcel or Common Property, whether statutory or otherwise for:
  - (i) the passage or provision of services;
  - (ii) support;
  - (iii) projections; and/or
  - (iv) access; and
- (n) all notifications, easements, statutory covenants and restrictions in relation to

the Title, Property, Scheme Land, Parcel or Common Property reasonably required in order to satisfy the requirements of any Authority as a condition of approving the Subsidiary Scheme, the registration of the Plan or any approval of the Development (including component parts of it).

31.4 The Buyer acknowledges that the Principal CMS and the Building Management Statements may change from time to time due to various factors including as part of the progressive carrying out of the Development or the requirements of the Developer. The Buyer must not Object to any changes.

### 32. Adverse Encumbrances on Title

The Seller promises the Buyer that at Settlement, the Title will be free from all adverse encumbrances except those:

- (a) authorised by the BCCM Act or other statute;
- (b) authorised or permitted by this Contract; or
- (c) otherwise disclosed in the Disclosure Documents.

### 33. Mistake

If a mistake is made by the Seller in the description of the Parcel, Scheme Land, the Property, the Title or the Common Property, the Buyer:

- (a) is not entitled to terminate this Contract;
- (b) may (unless that right is limited elsewhere in this Contract) make a claim for compensation if any loss is suffered by the Buyer; and
- (c) subject to sub-clause (b) above, is not entitled to otherwise Object.

### 34. Buyer must not Object

Subject to any legislative rights of the Buyer or any rights of the Buyer under this Contract, and without limitation to the Seller's rights elsewhere in this Contract, the Buyer will not Object as a result of:

- (a) any of the matters and disclosures contained in this Contract, the

- Disclosure Documents or the Promotional Materials;
- (b) any error, mistake or omission contained in the Disclosure Documents or the Promotional Materials including any plan, document or schedule, accompanying, attached to or forming part of them;
  - (c) the views from the Lot being interrupted due to the further carrying out of the Development including if the Developer has made Variations to the Development resulting in the views being interrupted;
  - (d) the Lot being affected by shadowing from other improvements within the Development due to the further carrying out of the Development including if the Developer has made Variations to the Development resulting in the shadowing;
  - (e) residential lots with the Development including the Subsidiary Scheme being sold as affordable housing whether pursuant to a condition of a development approval or otherwise;
  - (f) the Identification Plan not specifying the precise height of the Lot by reference to natural ground level or by reference to Australian Height Datum;
  - (g) the Floor Layout Plan not showing the area or dimensions of the Lot including its internal layout (size of rooms, balcony areas, joinery and the like);
  - (h) the Principal Scheme, Subsidiary Scheme or the Development being developed progressively;
  - (i) settlement of lots within the Subsidiary Scheme taking place at different times as contemplated by the clause titled "Staged Settlements";
  - (j) the Lot Entitlement;
  - (k) all matters contained in, endorsed upon or annexed to the Principal CMS, the Subsidiary CMS or the Plan;
  - (l) the By-laws;
  - (m) any transfer, lease, easement, licence or other right over part of the Common Property or Subsidiary Body Corporate assets given to the Seller, any Authority, any provider of utility infrastructure, any service contractor, the owner of a lot in the Development or the owner of nearby land;
  - (n) the Principal Body Corporate and/or the Subsidiary Body Corporate entering into agreements with body corporates of other community titles schemes (including other subsidiary schemes) under which members and occupiers of lots in the Principal Scheme and/or Subsidiary Scheme and lots included in the other schemes share the use and enjoyment of facilities forming part of the common property and/or body corporate assets of one or more of the schemes;
  - (o) any alteration to the street number or address of the Lot, Principal Scheme, the Subsidiary Scheme or the Development;
  - (p) any alteration to the location of any other lot in the Subsidiary Scheme from those shown in the Identification Plan or Promotional Materials;
  - (q) any change in the description of areas of Common Property or body corporate asset intended to be allocated for the exclusive use and enjoyment of the Lot;
  - (r) any alteration to the Lot Entitlement of the Lot or any other lot from the Proposed Lot Entitlement;
  - (s) any alteration in the aggregate Lot Entitlement of all lots in the Principal Scheme or the Subsidiary Scheme;
  - (t) any alteration to the materials which comprise the Statutory Disclosure Statements including any community management statement as a result of any changes to legislation;
  - (u) the allocation of a parking space (if any), bicycle park (if any), courtyard (if any) or storage area (if any) to the Lot by way of a grant of Common Property or body corporate assets under an



- exclusive use by-law and not as part of the Title;
- (v) the allocation of a parking space which is a "small car space" or similar for the exclusive use of the occupier of the Lot instead of a regular sized parking space;
  - (w) the existence of columns next to or partially within a parking space or bicycle park which may interfere with the convenient use of the space;
  - (x) the existence of service pipes, conduits and the like through areas which are parking spaces or storage areas (such as drainage pipes running along the underside of the slab above a parking space or electrical conduits running along the inside wall of a storage area);
  - (y) the Parcel being affected by flooding or other flow or inundation of water at any time including before or after formation of this Contract and Settlement;
  - (z) the Name not forming part of the name of the Subsidiary Body Corporate or the Building;
  - (aa) a boundary of the Parcel or the Scheme Land not being fenced, or any boundary, fence or wall not being upon or within the boundary;
  - (bb) the existence of an encroachment onto or from the Parcel or the Scheme Land;
  - (cc) an alteration in the number of lots in the Subsidiary Scheme or the Principal Scheme or the numbering, size, location or Lot Entitlement or permitted use of lots in the Subsidiary Scheme, Principal Scheme or other subsidiary scheme (of the Principal Scheme);
  - (dd) the existence or passage through the Lot, Scheme Land, Parcel or Common Property of utility infrastructure whether for the Lot, the Building, the Common Property or other adjoining building, property or lots;
  - (ee) the subdivision of the Parcel into the Scheme Land by any type of survey plan determined by the Seller in its discretion;
  - (ff) the subdivision of the Scheme Land into the Scheme by any type of survey plan determined by the Seller in its discretion;
  - (gg) the Seller subdividing or amalgamating any lots in the Subsidiary Scheme other than the Lot;
  - (hh) the transfer of any additional land into the Subsidiary Scheme, the Principal Scheme or the Development whether as a lot or Common Property;
  - (ii) the transfer, dedication or excise of any land out of the Parcel, the Scheme Land, the Principal Scheme, the Subsidiary Scheme or the Development;
  - (jj) the Seller replacing or updating materials disclosed in the Statutory Disclosure Statements or the Disclosure Documents;
  - (kk) an alteration to the Shared Facilities, the Common Property, Subsidiary Body Corporate assets or any other facilities or rights in relation to their use;
  - (ll) an alteration in the access arrangements and facilities intended to benefit or burden the Principal Scheme or the Subsidiary Scheme;
  - (mm) the Seller causing an alteration to the number of floors in the Building by inserting additional floors or omitting proposed floors and any consequential changes to the location or identification of the Lot in terms of elevation, level or height within the Building or the description of the Lot;
  - (nn) the recording of a number of community management statements, building management statements and survey plans in order to facilitate the carrying out of the Principal Scheme and/or the Development in stages;
  - (oo) the Seller making changes to the Identification Plan (and therefore the Plan) including converting the Identification Plan (and the Plan) into a series of plans to facilitate registration, staging or further staging of the

- Principal Scheme, the Subsidiary Scheme and/or the Development;
- (pp) Common Property (or proposed Common Property) comprising the foyer area outside of a lot being added to the titled area of that lot;
  - (qq) certificates of classification (or equivalent) being issued at different times for different parts of the Building, Subsidiary Scheme, Principal Scheme and/or Development;
  - (rr) there being no pool safety certificate at Settlement if there is a pool;
  - (ss) facilities within the Development being made available for use at different times including after Settlement;
  - (tt) a change in the Regulation Module to apply to the Principal Scheme and/or the Subsidiary Scheme;
  - (uu) the non-disclosure of proposed service location diagrams as part of the Proposed Subsidiary CMS;
  - (vv) the disclosure of proposed service location diagrams as part of the Proposed Subsidiary CMS when those diagrams are not required by the BCCM Act;
  - (ww) utilities being supplied to the Lot by the Principal Body Corporate, the Subsidiary Body Corporate (or both) or the Seller or any party nominated by the Seller including if the Buyer is required to enter into an agreement with such supplier in relation to the supply of the relevant utility;
  - (xx) utility infrastructure being owned by the supplier of the utility and not the Principal Body Corporate or the Subsidiary Body Corporate (for example, cabling, meters, hot water, air conditioning and gas supply equipment, communications equipment and associated infrastructure);
  - (yy) insurance for the Principal Scheme and/or the Subsidiary Scheme being arranged as part of an insurance policy taken out under the Building Management Statements;
  - (zz) the Seller causing the Subsidiary Body Corporate to have one or more extraordinary general meetings while it is (or effectively is) the sole member of the Subsidiary Body Corporate and electing or confirming the appointment of the members of the Committee and attending to matters required by the BCCM Act;
  - (aaa) the Seller causing the Subsidiary Body Corporate to give any indemnity in favour of an Authority or other entity as required by an Authority;
  - (bbb) the Lot or the Common Property being recorded on or in the Contaminated Land Register, Environmental Management Register or any similar register maintained by an Authority or being subject to a site management plan, remediation action plan or similar plan because the Parcel, the Scheme Land or Common Property is or was recorded on such a register or is or was subject to such a plan;
  - (ccc) the Parcel, the Scheme Land, the Common Property or the Lot being recorded on or in the Contaminated Land Register or the Environmental Management Register or any similar register or being subject to a site management plan, remediation action plan or similar because of something that occurs or contamination that is discovered during building of the Development (or any part of it) or because of the installation of improvements within the Development (or any part of it), for example, fuel storage tanks for back up generators;
  - (ddd) the Seller causing the Subsidiary Body Corporate to enter into any agreement that may be a requirement of any approval issued by an Authority or as a condition to the provision of any service or utility;
  - (eee) the Seller causing the Subsidiary Body Corporate to enter into or amend agreements, documents or dealings or any other matter referred to in the BCCM Act or disclosed or completed in this Contract or the Disclosure Documents (including all or some of the Subsidiary Body Corporate Agreements);

- (fff) the Seller not causing the Subsidiary Body Corporate to enter into all or some of the Subsidiary Body Corporate Agreements;
- (ggg) the Principal Body Corporate having entered into or entering into the Principal Body Corporate Agreements, even if the Developer or any entity related to the Developer received a fee or some other benefit from those agreements being entered into;
- (hhh) the identity of the manager under the Subsidiary Management Engagement & Letting Authorisation Agreement not being known or not being disclosed to the Buyer as at the Contract Date;
- (iii) the grant of the use by Occupation Authority or otherwise of areas of the Common Property to the parties who enter into the Subsidiary Management Engagement & Letting Authorisation Agreement (or some of them) for the use of an office, reception, storage space or other uses ancillary to the duties of a service contractor or business of a letting agent; and
- (jjj) the existence of any electrical substation or transformer or telecommunications facility (including a tower or satellite dish) or similar thing within or on the Development.

## I. **BODY CORPORATE**

### 35. **By-Laws**

- 35.1 Subject to sub-clause 2, on Settlement, the By-laws will be as set out in the Proposed Subsidiary CMS.
- 35.2 The Seller is entitled to make or procure changes to the By-laws considered necessary by the Seller, or as required by an Authority for the effective control and management of the Subsidiary Scheme. Subject to any rights of the Buyer under the BCCM Act, the Buyer must not Object to any changes of the By-laws.
- 35.3 The By-laws for the Principal Scheme are anticipated to be as set out in the Principal CMS. However, the Principal Body Corporate may cause the Principal CMS (including the By-laws) to be changed and the Seller will have limited or no control in this regard. The Buyer

must not Object to any changes to the Principal CMS.

### 36. **Parties Agreement – Exclusive Use Allocations**

- 36.1 The Parties, for the purposes of Part 5 Division 2 of the BCCM Act and any exclusive use By-law that authorises the exclusive use allocation of Common Property or an asset of the Principal Body Corporate or the Subsidiary Body Corporate, agree:

- (a) to the allocation of the Common Property or body corporate asset (to which the By-law applies) as contemplated by this Contract or the Disclosure Documents (for example in the Proposed Subsidiary CMS). This agreement to the allocation of Common Property or body corporate asset extends to Common Property or body corporate assets in respect of which the Seller has exercised its rights to make Variations under this Contract; and
- (b) that the Seller or the Seller's Solicitor giving the Subsidiary Body Corporate or Principal Body Corporate (as the case may be) a community management statement for signing, or the Seller signing a community management statement as original owner or on behalf of the Subsidiary Body Corporate constitutes a notification of an authorised allocation by the Seller to the Subsidiary Body Corporate or Principal Body Corporate (as the case may be) in respect of exclusive use of Common Property or body corporate asset as set out in that community management statement.

- 36.2 The Buyer must not Object if, at Settlement, the Principal CMS or the Subsidiary CMS does not record the allocation of the Common Property or body corporate asset for the benefit of the occupiers of the Lot as contemplated by this Contract or the Disclosure Documents provided that the Principal Body Corporate or the Subsidiary Body Corporate (as the case may be) has been given notification of the authorised allocation from the Seller or the Seller's Solicitor.

**37. Subsidiary Body Corporate Records**

The Buyer may apply and is authorised by the Seller to apply to the Subsidiary Body Corporate for an information certificate under Section 205 of the BCCM Act.

**38. Body Corporate Agreements**

38.1 The Seller may, within 12 months after establishment of the Subsidiary Scheme, cause the Subsidiary Body Corporate to enter into the Subsidiary Body Corporate Agreements or any one or more of them with any party or parties which, in the Seller's opinion, are reasonably qualified to perform the obligations contained in those agreements including the Seller itself or parties however related to the Seller.

38.2 The Seller may change the terms of the Subsidiary Body Corporate Agreements as considered necessary by the Seller for the effective control and management of the Subsidiary Scheme. Subject to any statutory rights of the Buyer, the Buyer must not Object to any changes to those agreements.

38.3 The Buyer agrees that the terms of the proposed Subsidiary Body Corporate Agreements:

- (a) achieve a fair and reasonable balance between the interests of the parties to those agreements; and
- (b) are appropriate for the Subsidiary Scheme,

and that the powers to be exercised and functions required to be performed by the service contractor and letting agent or manager under the Subsidiary Management Engagement & Letting Authorisation Agreement are appropriate for the Subsidiary Scheme and do not adversely affect the Subsidiary Body Corporate or its ability to carry out their functions.

38.4 The Buyer consents to the Seller causing the Subsidiary Body Corporate to enter into the Subsidiary Body Corporate Agreements on the basis that the Seller will receive fees (or other benefits) for causing those agreements or any one or more of them to be entered into. The Buyer affirms any such action to be taken by the Seller.

38.5 The Buyer must not Object or participate in (including voting for, authorising or otherwise procuring that) the Subsidiary Body Corporate objecting or making any Claim arising out of the Seller:

- (a) causing the Subsidiary Body Corporate Agreements or any one or more of them to be entered into with parties nominated by the Seller who are not related to the Seller;
- (b) causing the Subsidiary Body Corporate Agreements or any one or more of them to be entered into with a party or parties related to the Seller, including by common shareholders and/or company officers to the Seller; or
- (c) obtaining a fee or deriving any form of benefit as a result of the Subsidiary Body Corporate entering into the Subsidiary Body Corporate Agreements or any one or more of them.

38.6 The Buyer must vote against any motion of the Subsidiary Body Corporate that the Subsidiary Body Corporate object to or make a Claim in relation to the matters set out in this clause.

38.7 Notwithstanding Settlement, if there is a breach or anticipated breach by the Buyer of this clause, the Seller will be entitled to all reasonable Costs incurred and all losses suffered as a result of, or arising from, the breach or anticipated breach.

38.8 The Buyer acknowledges receipt of the Seller's disclosure to the Buyer titled "Disclosure About Management Rights" contained within the Disclosure Documents.

38.9 A reference to a service contractor providing services in respect of a particular asset in the Subsidiary Body Corporate Agreements does not mean that that asset will be provided. For example, a reference to maintaining a water feature does not mean that a water feature will form part of the Common Property.

**J. THE BUYER**

**39. Foreign Investment Review Board**

39.1 The Buyer promises the Seller that its status as a Foreign Interest as shown in the Reference Schedule is correct.

39.2 If the Buyer is a Foreign Interest, the Buyer promises to the Seller that either:

- (a) the Treasurer of Australia has consented under FATA to the Buyer's purchase of the Lot; or
- (b) the Treasurer's consent is not required to the Buyer's purchase of the Lot; or
- (c) the Buyer has received from the Seller a copy of the approval certificate under FATA to sell apartments in the Development to Foreign Interests.

39.3 In order to permit the Seller to comply with its obligations to the Treasurer of Australia, the Buyer must, within 10 Business Days after receiving a request from the Seller, give to the Seller's Solicitor a statement showing:

- (a) the name and nationality of any individual Buyer;
- (b) if the Buyer is a company, the names and nationality of all ultimate shareholders of the Buyer;
- (c) if the Buyer is acting as trustee, the names and nationality of all beneficiaries and unitholders (if any) of the trust;
- (d) whether or not the Buyer is a Foreign Interest; and
- (e) any other relevant information reasonably required by the Seller.

39.4 The Buyer agrees that if any of the particulars given under sub-clause 3 change before Settlement, then the Buyer must give a further statement to the Seller's Solicitor within 5 Business Days of the change occurring.

39.5 If the Buyer does not deliver a statement as required by sub-clause 3 and 4, the Buyer will be in default of this Contract.

39.6 The Buyer consents to any information given by the Buyer under this sub-clause being included in any reports that must be given by the Seller as a condition of approvals given to the Seller under FATA.

**40. Personal Guarantee**

40.1 This clause applies if the Buyer:

- (a) is a company;
- (b) is a company trustee of a trust; or
- (c) is an individual trustee of a trust.

40.2 If this clause applies, the Buyer must, as an Essential Term, arrange that its performance under this Contract is guaranteed, in the form of the Guarantee, by:

- (a) in the case of the Buyer being a company, the directors of the company, and if required by the Seller, the shareholders of the company;
- (b) in the case of the Buyer being a company and a trustee of a trust, the directors of the company, and if required by the Seller, the shareholders of the company and the principal beneficiaries of the trust; and
- (c) in the case of the Buyer being an individual trustee of a trust, the Buyer in its personal capacity and, if required by the Seller, the principal beneficiaries of the trust.

40.3 The Guarantee must be signed by the Guarantors and witnessed before the Seller signs this Contract.

40.4 The Buyer, and the Guarantors by signing the Guarantee, acknowledge that if the Seller transfers or assigns its interest in this Contract, the Parcel and/or the Scheme Land, the Seller also assigns or transfers the benefit of the Guarantor's obligations and indemnities under the Guarantee to the transferee or assignee.

**41. Buyer a Trustee**

41.1 Unless otherwise disclosed in the Reference Schedule, the Buyer promises the Seller that the Buyer is not buying the Property as trustee of any trust.

41.2 If the Buyer is described in the Reference Schedule as being a trustee of a trust, each promise made by the Buyer in this Contract which is in the nature of a representation or a warranty is true on the basis that each such representation or warranty is made by the Buyer personally and as trustee for the relevant trust.

41.3 If the Buyer is described in the Reference Schedule as being trustee of a trust, then the Buyer promises the Seller that:

- (a) the Buyer is the sole trustee of the trust;
- (b) the Buyer enters into this Contract as part of the due administration of the relevant trust and that this Contract is for the benefit of the relevant trust and its beneficiaries;
- (c) the Buyer is empowered by the trust instrument for the relevant trust to enter into and perform this Contract in its capacity as trustee of the trust (there being no restriction on or condition of it doing so);
- (d) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust instrument for the relevant trust for it to enter into and perform this Contract;
- (e) no property of the relevant trust has been re-settled or set aside to any other trust;
- (f) the relevant trust has not been terminated and no event for the vesting of the assets of the trust has occurred;
- (g) the trust instrument for the relevant trust complies with all applicable laws;
- (h) the Buyer has complied with its obligations and duties under the trust instrument for the relevant trust and at law;
- (i) the Buyer has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability undertaken under to this Contract; and

- (j) the Buyer will, upon request, deliver to the Seller copies of all documents establishing or amending the trust or making appointments under the trust.

41.4 Each of the Buyer's promises in sub-clause 3 are repeated, with respect to the facts and circumstances, at the time, at Settlement.

#### 42. Age of Majority

The Buyer, if a natural person, whether buying as a trustee of a trust or for its own benefit, promises the Seller that the Buyer is at least 18 years of age at the Contract Date.

#### 43. Insolvency or Death of Buyer

43.1 The Buyer is in default of this Contract, if, before Settlement, the Buyer:

- (a) being a company:
  - (i) resolves to go into liquidation;
  - (ii) enters into a scheme of arrangement for the benefit of its creditors;
  - (iii) is ordered to be wound up or is placed in provisional liquidation;
  - (iv) is subject to an application for its winding up; or
  - (v) is put into the control of a receiver and manager, official manager or administrator; or
- (b) being a natural person enters into a scheme of arrangement, composition or assignment with or in favour of its creditors or becomes bankrupt.

43.2 If before Settlement the Buyer dies then the Seller may terminate this Contract. If this happens:

- (a) the Deposit and Interest must be released to the Buyer's estate or trustee as the case may be; and
- (b) neither Party has any further Claim against the other Party.

43.3 For the purposes of this clause "Buyer" includes any of the parties that comprise the Buyer.

**K. DEPOSIT**

**44. Deposit**

- 44.1 The Parties nominate the Deposit Holder as trustee for the purposes of the LSA.
- 44.2 The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. This is an Essential Term. The Deposit Holder will hold the Deposit until a Party becomes entitled to it.
- 44.3 The Buyer is in default if the Buyer:
- (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post dated cheque; or
  - (c) pays the Deposit by a cheque which is dishonoured on presentation.
- 44.4 The Parties authorise and direct the transfer to the Deposit Holder of any amounts paid by the Buyer to third party deposit holders under expression of interest or similar arrangements to be credited as part payment of the Deposit by the Buyer under this Contract.

**45. Investment of Deposit**

- 45.1 The Parties instruct the Deposit Holder to invest the Deposit. The Deposit Holder may invest the Deposit with an Australian bank or other financial institution selected by the Deposit Holder on terms and at an interest rate determined by the Deposit Holder in its total discretion.
- 45.2 The Deposit Holder is not liable to either Party for any delay in investing the Deposit.
- 45.3 The Parties acknowledge that as a condition of funding for the Scheme, the financier may require that the Deposits be invested with that financier at an interest rate determined by the financier. The Parties must not Object if this occurs.
- 45.4 The Deposit Holder may at any time, for bona fide purposes, including after a request by the Seller, terminate the investment of the Deposit and re-invest the Deposit and Interest accrued to that time with an alternate Australian bank or other financial institution selected by the Deposit Holder on terms and at an interest rate

determined by the Deposit Holder in its total discretion.

- 45.5 The Parties may provide the Deposit Holder with their tax file number (if any) and must provide any other information or assistance necessary for the purpose of the investment. The Buyer acknowledges that if it does not provide its tax file number to the Deposit Holder, any Interest will be subject to withholding tax.
- 45.6 The Parties indemnify the Deposit Holder for the costs of preparing and lodging any income tax return required in respect of the investment of the Deposit and authorise the Deposit Holder to deduct those costs from the Interest.
- 45.7 The Deposit Holder is authorised to terminate the investment of the Deposit at a reasonable time before Settlement so that the Deposit and Interest will be available at Settlement.
- 45.8 The Deposit Holder is not required to invest the Deposit:
- (a) until the Buyer gives the Deposit Holder its tax file number;
  - (b) unless the Deposit equals 10% of the Price;
  - (c) until the whole of the Deposit is paid;
  - (d) if the Settlement Date is anticipated to be less than 90 days after the Contract Date; or
  - (e) if the Buyer has notified the Seller that it intends to substitute a cash payment of the Deposit with a bank guarantee in accordance with this Contract.
- 45.9 The Deposit is invested at the risk of the Party who is ultimately entitled to it. The Deposit Holder is not liable for any loss or if diminution occurs in value arising out of the investment of the Deposit unless such loss or diminution is as a result of an act committed or omitted in personal, conscious or fraudulent bad faith by the Deposit Holder. All persons claiming any beneficial interest in or over the Deposit are deemed to take with notice of and subject to the protection conferred by this clause upon the Deposit Holder.
- 45.10 Any Interest held by the Deposit Holder is held in trust until a Party is entitled to it under this Contract or at law. The Interest is not held by

the Deposit Holder by way of Deposit but under an unrelated trust and under no circumstances is the Seller entitled to receive any of the Interest before this Contract is settled or terminated.

45.11 The Party who is entitled to the Interest authorises the Deposit Holder to retain from the amount of the Interest, the sum of \$165.00 (including GST) in payment to the Deposit Holder for attendances associated with the investment of the Deposit. The retention amount is to be released to the Deposit Holder for its absolute benefit after (and not before) Settlement, and the payment is conditional upon Settlement taking place.

#### 46. Entitlement to Deposit & Interest

46.1 Entitlement to the Deposit and Interest is determined as follows:

Circumstance	Entitlement to Deposit	Entitlement to Interest
If this Contract settles	Seller	Buyer
If this Contract is terminated without default by Buyer	Buyer	Buyer
If this Contract is terminated due to default by Buyer	Seller	Seller

46.2 This clause applies if Settlement has occurred and the Buyer received at or after Settlement a cheque from the Deposit Holder by way of payment of the Buyer's share of the Interest ("Interest Cheque"). The Buyer must, within a reasonable time after Settlement, present to a bank the Interest Cheque for payment. If the Buyer does not present the Interest Cheque within a reasonable time (but not less than 3 months from the date of issue), the Buyer agrees that the Seller becomes the absolute owner of the Interest and the Deposit Holder is authorised by the Parties to:

- (a) cancel the Interest Cheque;
- (b) pay to the Seller's Solicitor \$330.00 or such lesser amount as is available by way of payment of the Seller's costs of the Seller's Solicitor associated with the cancellation of the Interest Cheque and associated attendances required as a result of the Buyer's failure to present the Interest Cheque for payment; and

- (c) disburse to the Seller or as the Seller directs any balance of the Buyer's share of the Interest held by the Deposit Holder.

#### 47. Bank Guarantee

47.1 Instead of paying the Deposit as a cash payment, the Buyer may lodge with the Seller's Solicitor a bank guarantee which satisfies the requirements of this clause.

47.2 If the Buyer has already paid a cash Deposit, the Buyer may at any time elect to replace that cash Deposit with a bank guarantee which satisfies the requirements of this clause.

47.3 In order to satisfy the requirements of this clause, a bank guarantee must:

- (a) be issued by an Australian bank approved by the Seller;
- (b) be in a form acceptable to the Seller;
- (c) be for the amount of the Deposit;
- (d) be issued in favour of HWL Ebsworth Lawyers (as "Favouree" as opposed to specifying the Seller as Favouree);
- (e) specify that the Seller has agreed to accept the bank guarantee instead of payment of a cash deposit;
- (f) require the bank to pay HWL Ebsworth Lawyers the Deposit amount without first checking with the Buyer;
- (g) have no expiry date and be unconditional and irrevocable; and
- (h) contain the names of the Seller and the Buyer (and no other third party) and make reference to this Contract and the sale made under it, eg:

Oakstead Harbour Project Pty Ltd  
A.C.N. 161 237 047 sale of unit [No.]  
"Proximity Hamilton" to [Buyer's Name]



**NOTE: The terms of the bank guarantee must be strictly complied with.**

47.4 The Seller's Solicitor may call upon a bank guarantee lodged pursuant to this clause if:

- (a) this Contract has been terminated for default by the Buyer and the Seller has declared the Deposit forfeited; or
- (b) the Buyer has delivered a bank guarantee which is limited by time and the Buyer has failed (whether or not requested to do so by the Seller) to replace the bank guarantee with either a cash deposit or a further bank guarantee at least 20 Business Days before the expiry date of the bank guarantee.

47.5 The Seller may, in its total discretion, accept a bank guarantee which does not comply with the provisions of this clause. If that happens, if directed by the Seller at any time before Settlement to do so, the Buyer must, at the Buyer's expense, within 10 Business Days after direction, replace the bank guarantee with an instrument which complies with the requirements of this clause or a cash payment of the Deposit. This is an Essential Term.

47.6 The Buyer must not do anything which may cause the bank guarantee to be withdrawn, revoked, terminated, compromised or limited in any way.

47.7 Any notice to buyers about bank guarantees in the Disclosure Documents is included only to assist the Buyer to obtain a bank guarantee which complies with the requirements of this clause and nothing in the notice constitutes a waiver of the rights of the Seller. The Seller recommends that the Buyer gives a copy of the notice to its bank guarantee provider.

#### **48. Deposit Bond**

48.1 The Seller may, in its total discretion and without any obligation to do so, accept from the Buyer as security for payment of the Deposit a Deposit Bond to be lodged with the Seller's Solicitor which may or may not be limited as to time.

48.2 If that happens, the Buyer must, as an Essential Term:

- (a) at the Buyer's expense, within 10 Business Days after direction by the

Seller, replace the Deposit Bond with a cash payment of the Deposit or compliant bank guarantee; or

- (b) if the Deposit Bond is limited as to time, and without any direction by the Seller to do so, replace the Deposit Bond, not less than 20 Business Days before its expiry date with a replacement Deposit Bond (which the Seller may or may not accept in its total discretion), cash payment of the Deposit or compliant bank guarantee.

48.3 The Seller's Solicitor may call upon a Deposit Bond lodged under this clause if:

- (a) this Contract has been terminated for default by the Buyer and the Seller has declared the Deposit forfeited; or
- (b) if:
  - (i) the Buyer has delivered a Deposit Bond which is limited by time; and
  - (ii) the Buyer has failed (whether or not requested to do so by the Seller's Solicitor) to replace the Deposit Bond with a replacement Deposit Bond, cash Deposit or compliant bank guarantee at least 20 Business Days before expiry of the Deposit Bond; and
  - (iii) the terms of the Deposit Bond permit a call to be made on it without termination of this Contract by the Seller.

48.4 The Buyer must not do anything which may cause the Deposit Bond to be withdrawn, revoked, compromised, terminated or limited in any way.

#### **49. Calling on Bank Guarantee or Deposit Bond**

49.1 The Seller or the Seller's Solicitor is not required to notify the Buyer that:

- (a) the bank guarantee or Deposit Bond is due to expire and must be replaced; or
- (b) a call is to be made on the bank guarantee or Deposit Bond,

as a precondition to a call being made.

49.2 If the Seller's Solicitor calls upon the bank guarantee or Deposit Bond, the proceeds received must be dealt with in accordance with the provisions of the LSA and the terms of this Contract.

49.3 The Deposit Holder/Seller's Solicitor is not liable for the loss of the bank guarantee or Deposit Bond or for making any call on or demand under the bank guarantee or Deposit Bond unless that action occurs as a result of or in consequence of an act committed or omitted in personal, conscious or fraudulent bad faith by the Deposit Holder/Seller's Solicitor. All persons claiming any beneficial interest in or over the bank guarantee or Deposit Bond are deemed to take with notice of and subject to the protection conferred by this clause upon the Deposit Holder/Seller's Solicitor.

## L. PRICE

### 50. **Payment of Price**

At Settlement, the Buyer must pay the Balance Price by Bank Cheques as directed by the Seller or the Seller's Solicitor. This is an Essential Term

### 51. **GST**

51.1 The Parties agree that the Price is inclusive of GST.

51.2 Notwithstanding sub-clause 1, if and to the extent that any part of the supply of the Property is a Taxable Supply, the Parties agree that, if it is legally entitled to do so, the Seller will apply the Margin Scheme to work out the amount of GST payable on that supply.

51.3 This clause does not merge on Settlement or termination of this Contract.

51.4 Words starting with a capital letter which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this Contract.

51.5 This clause binds any other entity who is or becomes the supplier or recipient of the supply of the Property or any other supply under or by reason of this Contract.

### 52. **Adjustments**

52.1 The Price is to be adjusted for Outgoings as provided for in this clause.

52.2 Outgoings are apportioned on the basis that:

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

52.3 Outgoings must be apportioned:

- (a) if paid, on the amount paid;
- (b) if assessed but unpaid, on the amount payable (excluding any discount); or
- (c) if not assessed, unless otherwise provided for in this Contract, on the amount that the Seller's Solicitor, acting reasonably, determines as the basis on which the adjustment will be made.

52.4 In this clause "valuation" means a valuation by an Authority for rating and taxing purposes whether as an assessment of the value of land in its unimproved (natural) condition or as an assessment of the site value of the land (in its present state).

52.5 If there is a separate valuation for the Lot, then the land tax amount for apportionment purposes will be calculated on the basis that, as at midnight on the previous 30th June, the Seller owned no land other than the Lot.

52.6 If there is no separate valuation for the Lot, the land tax amount will be calculated for apportionment purposes on the basis that, as at midnight on the previous 30th June, the Seller owned no land other than:

- (a) its interest in the Scheme Land (if there was a separate valuation for the Scheme Land); or
- (b) its interest in the Parcel (if there was no separate valuation for the Scheme Land).

52.7 If there is no separate valuation for the Lot but there is a valuation for the Scheme Land, then the land tax amount for apportionment purposes for the Lot is to be determined using the following formula:

$$\frac{\text{Amount} \times \text{CE}}{\text{ACE}}$$

Where:

Amount = amount of land tax payable on the Scheme Land determined in accordance with sub-clauses 4 and 6;

CE = contribution entitlement for the Lot; and

ACE = aggregate contribution entitlement for all lots in the Subsidiary Scheme.

- 52.8 If there is no separate valuation for the Lot or Scheme Land, but there is a separate valuation for the Parcel, then the land tax amount for apportionment purposes for the Lot is to be determined using the following formula:

$$\text{Amount} \times \frac{\text{CE}}{\text{ACE}} \times \frac{\text{ASL}}{\text{AP}}$$

Where:

Amount = amount of land tax payable on the Land determined in accordance with sub-clauses 4 and 6;

CE = contribution entitlement for the Lot;

ACE = aggregate contribution entitlement for all lots in the Scheme;

ASL = the area of the Scheme Land; and

AP = the area of the Parcel.

If the application of the formula specified above results in a manifestly unfair apportionment or adjustment of land tax as between the Parties, then land tax shall be adjusted in the manner determined by the Seller's Solicitor, acting reasonably, to achieve a fair apportionment or adjustment.

- 52.9 If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Lot on payment of a specified amount, then the following will apply:

- (a) at the election of the Seller, land tax will be apportioned on the greater of the specified amount or the amount calculated under this clause;
- (b) the Seller will provide a cheque for the specified amount at Settlement which

the Seller will promptly present to the Office of State Revenue after Settlement; and

- (c) land tax will be treated as paid at Settlement.

- 52.10 The amount paid by the Seller for body corporate and/or building insurance for the Subsidiary Scheme is to be adjusted using the following formula:

$$\frac{P \times \text{IE}}{\text{AIE}}$$

Where:

P = premium paid by the Seller (being the total amount paid by the Seller for body corporate and building insurance including brokerage fees, duties and GST);

IE = interest entitlement for the Lot; and

AIE = aggregate interest entitlement for all lots in the Subsidiary Scheme.

If the amount of the premium is also in respect of components of the Development other than the Subsidiary Scheme, then the "Premium" will be determined on a proportionate area basis or other more appropriate basis as determined by the Seller's Solicitor, acting reasonably.

- 52.11 The amount paid by the Seller for body corporate and/or building insurance for the Principal Scheme is to be adjusted using the following formula:

$$P \times \frac{\text{IE}}{\text{AIE}} \times \frac{\text{PIE}}{\text{APIE}}$$

Where:

P = premium paid by the Seller (being the total amount paid by the Seller for body corporate and building insurance including brokerage fees, duties and GST);

IE = interest entitlement for the Lot;

AIE = aggregate interest entitlement for all lots in the Subsidiary Scheme;

PIE = interest entitlement for the Subsidiary Scheme (in the Principal CMS); and

APIE = aggregate interest entitlement for all lots in the Principal Scheme (in the Principal CMS).

If the amount of the premium is also in respect of components of the Development other than the Principal Scheme, then the "Premium" will be determined on a proportionate area basis or other more appropriate basis as determined by the Seller's Solicitor, acting reasonably.

52.12 For the purposes of determining areas if required for this clause, a certification from the surveyor engaged by the Seller for the Subsidiary Scheme will be binding on the Parties in the absence of manifest error.

52.13 For the purpose of calculating the amount of land tax for apportionment purposes, if the application of the formulas set out in the clause is, in the opinion of the Seller's Solicitor, acting reasonable, impractical or results in an apportionment which is unfair, the Seller's Solicitor may calculate the amount of land tax for apportionment by any reasonable means determined by the Seller's Solicitor. If this happens, the Buyer must not Object.

52.14 No adjustment to the Price is to be made in respect of water usage.

52.15 If any Outgoings (other than land tax which is dealt with elsewhere in this clause) are assessed but unpaid at Settlement, then the Seller will provide a cheque for the amount at Settlement and pay it to the relevant authority or entity. If a cheque is provided under this clause, the relevant Outgoings will be treated as paid at Settlement.

52.16 There is to be a deduction to the Price equal to the Queensland Land Registry registration fee for any mortgage or other encumbrance registered over the Title which is being released at Settlement.

52.17 Notwithstanding any other provision of this clause, if an Outgoing is paid at Settlement or is taken to be treated as paid at Settlement, the Seller may waive the requirement to adjust the Price in relation to that Outgoing.

52.18 If Settlement does not occur on the Settlement Date due to the Buyer's default, or the Settlement Date is extended by agreement between the Parties following a request for an extension by the Buyer, then Outgoings, at the Seller's election, may be adjusted as if Settlement took place on the original date

specified for Settlement under the terms of this Contract.

## **M. SETTLEMENT**

### **53. Settlement Date**

53.1 When the Subsidiary Scheme has been established, the Seller will give notice to the Buyer calling for Settlement provided that:

(a) the earliest date such notice may be given is when the Seller is reasonably of the opinion that all other Conditions Subsequent will be satisfied within 14 days ("Earliest Notice Date"); and

(b) such notice may be given at any time on or after the Earliest Notice Date but must be given not later than 60 days after the last of the other Conditions Subsequent have been satisfied.

53.2 The Settlement Date is the date 14 days after the Seller gives notice to the Buyer calling for Settlement.

53.3 The Seller may, at any time before Settlement, by notice to the Buyer extend on any number of occasions the Settlement Date by up to a total period of 90 days. If this happens, time remains of the essence of this Contract notwithstanding the extension. The Seller may only extend under this clause for bona fide purposes including, for example, to give the Seller more time to:

(a) satisfy the Conditions Subsequent;

(b) provide or deliver separate indefeasible Title at Settlement; and

(c) deal with any objections raised by the Buyer in relation to Defects or Common Property Defects whether alleged or actual.

### **54. Time & Place for Settlement**

54.1 As an Essential Term (subject to the Seller's rights to extend the Settlement Date), Settlement must take place on the Settlement Date:

(a) in Brisbane;

(b) at a time nominated by the Seller, and if no time is nominated at 3.00 pm;

- (c) at a place nominated by the Seller, and if no place is nominated at the offices of the Seller's Solicitor in Brisbane; and
- (d) between 9.00 am and 5.00 pm.

54.2 Settlement must not take place earlier than 14 days after the Seller gives notice to the Buyer that the Subsidiary Scheme has been established. For the purposes of Section 212 of the BCCM Act, the sale of the Lot under this Contract is for a Lot intended to come into existence on formation of the Subsidiary Scheme.

## 55. Transfer Documents

- 55.1 The Seller must prepare the Transfer Documents.
- 55.2 The Buyer must, within 2 Business Days after direction by the Seller give to the Seller further particulars as required by the Seller to enable the Seller to prepare the Transfer Documents.
- 55.3 If the Buyer pays the Seller's reasonable expenses, the Buyer may require the Seller to produce the Transfer Documents at the Office of State Revenue in Brisbane, for stamping before Settlement.
- 55.4 The Buyer must, within 10 Business Days after engaging any solicitor to act on its behalf in relation to this Contract and the conveyance of the Lot pursuant to it, cause that solicitor to give the Seller's Solicitor an undertaking that the Transfer Documents will be used for stamping purposes only pending Settlement so that, at the relevant time, the Seller can lend the Transfer Documents to that solicitor without charge for stamping prior to Settlement.
- 55.5 On receipt of an undertaking from the Buyer's Solicitor that the Transfer Documents will be used for stamping purposes only pending Settlement, the Seller will, at the relevant time, lend the Transfer Documents to the Buyer's Solicitor without charge for stamping before Settlement.
- 55.6 Each Party authorises the other Party and their solicitors to make any necessary amendments to the Transfer Documents so as to rectify any inaccuracies or complete any omissions.

## 56. Settlement Statement

- 56.1 Prior to Settlement, the Seller may give to the Buyer a Settlement Statement.
  - 56.2 If the Buyer considers that there is an error or omission in respect of anything contained in the Settlement Statement, the Buyer must, within 3 Business Days after receipt of the Settlement Statement, and in any event before the time nominated by the Seller for Settlement on the Settlement Date, give to the Seller a notice which clearly specifies the error or omission.
  - 56.3 If the Buyer does not comply with the requirements of sub-clause 2:
    - (a) the Buyer cannot later Object or assert that the Seller was not ready, willing or able to effect Settlement because of an error or omission in the Settlement Statement; and
    - (b) the Settlement Statement is taken to be correct and to list all the Settlement Materials.
  - 56.4 The purpose of this clause is to require the Buyer to notify the Seller well before the time for Settlement if the Buyer considers that there has been an error in the calculation of Settlement adjustments and figures or an omission in the list of Settlement Materials.
  - 56.5 The Seller may, at any time before Settlement, give the Buyer an updated or amended Settlement Statement and the provisions of this clause apply to that updated Settlement Statement.
  - 56.6 Nothing in this clause prevents the Seller from recovering any shortfall in payment of the Price after Settlement or requiring any adjustment to be made between the Parties after Settlement in relation to Outgoings if it is discovered that Outgoings were not apportioned in accordance with this Contract.
- ## 57. Procedure at Settlement
- 57.1 In exchange for payment of the Balance Price and, if applicable, release of the cash Deposit, the Seller must, as an Essential Term, provide or deliver to the Buyer at Settlement:
    - (a) separate indefeasible Title;

- (b) unstamped Transfer Documents capable of immediate registration (after stamping) if not already in the possession of the Buyer's Solicitor;
- (c) the Keys; and
- (d) vacant possession of the Property.

57.2 It is sufficient compliance with sub-clauses 1(c) and 1(d) if the Seller makes the Keys available for collection after Settlement from the Agent or the onsite manager of the Subsidiary Scheme.

57.3 The Buyer will only be entitled to receive a PPS Release from a Secured Party in respect of a Security Interest registered on the PPSR where the Sold Property is specifically described (in whole or part) under that Security Interest. The onus of demonstrating that the Sold Property is specifically described (in whole or part) under a Security Interest is on the Buyer and is to be demonstrated to the Seller on or before 7 days before the Settlement Date.

57.4 If the Lot is subject to mortgage(s) or other adverse encumbrance(s) (except those authorised or permitted by this Contract) then the Buyer must accept on Settlement an unstamped but signed release of mortgage(s) or withdrawal, surrender, removal or revocation of such adverse encumbrance(s) by whatever means permitted by the relevant authority and any other documents or declarations necessary to procure the stamping and registration of that release or withdrawal.

57.5 No paper certificate of title for the Title will be provided at Settlement. The Buyer acknowledges that the titling arrangements practised by the Queensland Land Registry are computerised so that a paper certificate of title is not issued unless requested by the registered owner. The Seller will not request a paper certificate of title and the Buyer must not Object to not receiving a paper certificate of title at Settlement.

## N. DEFAULT

### 58. Buyer's Default

#### 58.1 *Buyer's default – Breach of Essential Term or fundamental breach of intermediate term – Seller may affirm or terminate*

Without limiting any other right or remedy of the Seller including those under this Contract or any right under statute or at common law, if the

Buyer breaches or fails to comply with an Essential Term or makes a fundamental breach of an intermediate term of this Contract, the Seller may affirm or terminate this Contract.

#### 58.2 *If Seller affirms*

If the Seller affirms this Contract under sub-clause 1, it may sue the Buyer for damages, specific performance or both.

#### 58.3 *If Seller terminates*

If the Seller terminates this Contract under sub-clause 1, the Seller may do any or all of the following:

- (a) resume possession of the Property;
- (b) forfeit the Deposit and Interest;
- (c) sue the Buyer for the Deposit (if not yet paid);
- (d) sue the Buyer for damages; and/or
- (e) resell the Property.

#### 58.4 *Buyer's default – breach of other term*

Without limiting any other right or remedy of the Seller including those under this Contract or any right under statute or at common law, if the Buyer breaches or fails to comply with a term of this Contract other than a term of the kind described in sub-clause 1 above, the Seller may do any or both of the following:

- (a) sue the Buyer for damages; and/or
- (b) sue the Buyer for specific performance of the obligation breached.

#### 58.5 *Resale*

- (a) If the Seller terminates this Contract and the Property is resold, then the Seller may recover from the Buyer:
  - (i) any deficiency in price on resale as compared to the Price;
  - (ii) its Costs of any repossession, failed attempt to resell and the resale; and
  - (iii) any Outgoings that would have been payable by the Buyer if

this Contract had settled from the original due Settlement Date to the date of settlement of the resale of the Property inclusive,

all of which may be recovered as liquidated damages.

- (b) Any profit on resale of the Property, after deduction of the Seller's Costs, belongs to the Seller.

#### **58.6 Buyer Indemnifies Seller**

The Buyer indemnifies the Seller for all and any loss the Seller suffers and Costs the Seller incurs as a result of the Buyer's breach or failure to comply with any term or condition of this Contract, such Costs to the extent they comprise legal fees and outlays to be assessed on the full indemnity basis.

#### **59. Seller's Default**

##### **59.1 Seller's default – Breach of Essential Term or fundamental breach of intermediate term – Buyer may affirm or terminate**

Without limiting any other right or remedy of the Buyer including those under this Contract or any right under statute or at common law, if the Seller breaches or fails to comply with an Essential Term or makes a fundamental breach of an intermediate term of this Contract, the Buyer may affirm or terminate this Contract.

##### **59.2 If Buyer affirms**

If the Buyer affirms this Contract under sub-clause 1, it may sue the Seller for damages and, if the Conditions Subsequent have been satisfied, for specific performance or both.

##### **59.3 If Buyer terminates**

If the Buyer terminates this Contract under sub-clause 1, the Buyer may do any or all of the following:

- (a) sue the Seller for the Deposit (if paid) and any Interest; and
- (b) sue the Seller for damages.

#### **59.4 Seller's default – breach of other term**

Without limiting any other right or remedy of the Buyer including those under this Contract or any right under statute or at common law, if the Seller breaches or fails to comply with a term of this Contract other than a term of the kind described in sub-clause 1 above, the Buyer may do any or both of the following:

- (a) sue the Seller for damages; and/or
- (b) sue the Seller for specific performance of the obligation breached.

#### **59.5 Seller Indemnifies Buyer**

The Seller indemnifies the Buyer for all and any loss the Buyer suffers and Costs the Buyer incurs as a result of the Seller's breach or failure to comply with any term or condition of this Contract, such Costs to the extent they comprise legal fees and outlays to be assessed on the full indemnity basis.

#### **59.6 Insolvency of Seller**

The Seller is not in default of this Contract and is not in breach of any term of this Contract if the Seller is insolvent, commits an act of insolvency or is otherwise deemed or considered to be insolvent.

#### **60. Interest**

##### **60.1 Without limiting the rights of the Parties, if money payable by a Party under this Contract is not paid when due, the Party must, as an Essential Term:**

- (a) in the case of the Buyer, at Settlement, pay to the Seller interest on that money; and
- (b) in the case of the Seller, pay the Buyer interest on that money at the same time as the money is paid by the Seller,

calculated at the Contract Rate (published at the time that payment was first due) plus 3% per year, compounded annually, from the due date for payment until payment is made (inclusive). That interest may be recovered from the relevant Party as liquidated damages.

##### **60.2 For avoidance of doubt, and without waiver of the Seller's rights, if the Buyer fails to effect Settlement on the due date, then the Seller may elect to charge interest (which is payable**

at Settlement) on the full Price without making any allowance for the Deposit having been paid by the Buyer (this clause is included in these Contract Terms to take into account that the Buyer is entitled to receive the Interest if this Contract settles).

60.3 The Buyer's obligation to pay interest does not mean that the Seller has to agree or has agreed to extend any date on which a payment is due.

**61. Buyer to give Notice before Termination**

61.1 This clause does not apply if the Buyer has indicated in the Reference Schedule that the Property is being acquired for Personal Use (that is, if the Buyer has ticked YES to Personal Use).

61.2 If the Seller is in default and such default entitles the Buyer to terminate, cancel, avoid or declare itself not bound by this Contract, then, notwithstanding anything express or implied in this Contract, the Buyer must not and must not purport to terminate, cancel, avoid or declare itself not bound by this Contract unless:

- (a) the Buyer has first given the Seller notice:
  - (i) giving particulars of the default;
  - (ii) offering the Seller the opportunity to remedy the default within a reasonable time (given the nature of the default) but in any event within not less than 10 Business Days after such notice is given to the Seller; and
  - (iii) specifying that the Buyer intends terminating, cancelling, avoiding or declaring itself not bound by this Contract (as the case may be) if the notice is not complied with within a reasonable time; and
- (b) the Seller has not remedied the default complained of in the Buyer's notice within a reasonable time.

61.3 In this clause, the expression **default** includes a breach of or failure to comply with any term or condition of this Contract as well as any failure to comply with a Statutory Obligation relating to this Contract (including any Statutory Obligation which mandates the manner in which the Parties become bound by this Contract).

**O. LEGISLATIVE DISCLOSURE & OTHER ISSUES**

**62. Disclosure**

**62.1 Statutory Notices & Statements**

Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer acknowledges receiving, before signing this Contract:

- (a) the disclosure statement required by Sections 138 & 268 of the PAMD Act (PAMD Form 27c);
- (b) the Warning Statement which is attached to this Contract;
- (c) the Information Sheet which is attached to this Contract;
- (d) the Section 213 Statement duly signed and dated by the Seller or duly signed and dated by a person authorised by the Seller to do so;
- (e) the Section 21 Statement duly signed and dated by the Seller or duly signed and dated by an agent of the Seller;
- (f) details of the Proposed Lot Entitlement and exclusive rights (if any), as set out in the Disclosure Documents;
- (g) a copy of the Principal CMS and the Proposed Subsidiary CMS; and
- (h) the Identification Plan, clearly identifying the Lot.

**62.2 Buyer Promises**

Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer promises the Seller that the Buyer:

- (a) has read the statements described in sub-clause 1;
- (b) is aware of its rights under Chapter 5, Part 2 of the BCCM Act;
- (c) is aware of its rights under Sections 21 and 25 of the LSA;
- (d) is aware of its rights under Chapter 11 of the PAMD Act; and



- (e) is aware of the conditions set out in this Contract as regards to Variations to the Property, the Building, the Common Property, the Subsidiary Scheme, the Principal Scheme and the Development.

### **62.3 Separate Notices & Statements**

- (a) The Buyer acknowledges that the Statutory Disclosure Statements including the notices and statements acknowledged to have been received under sub-clause 1 are each separate notices and statements.
- (b) If the Seller has not itself signed and dated the Statutory Disclosure Statements contained in the Disclosure Documents, the Seller affirms that it has authorised the signatory to bind the Seller to the information contained in the Disclosure Documents and to sign and date the Statutory Disclosure Statements as the Seller's authorised signatory and agent.

### **62.4 Buyer's Acknowledgement & Promises – Section 213 Statement & Section 21 Statement**

- (a) The Buyer acknowledges that the Section 213 Statement comprises only that portion of the material contained in the Disclosure Document that is necessary to constitute a "disclosure statement" as required by Section 213 of the BCCM Act. For avoidance of doubt, the Section 213 Statement does not comprise the entire contents of the Disclosure Document. For example, the Section 213 Statement does not comprise the Specifications, particulars in relation to easements, information about bank guarantees and disclosure about management rights (if any).
- (b) The Buyer acknowledges that the Section 21 Statement comprises only that portion of the material contained in the Disclosure Document that is necessary to constitute a statement identifying the proposed lot and other matters as required by Section 21 of the LSA. For avoidance of doubt, the Section 21 Statement does not comprise the entire contents of the Disclosure Document. For example, the Section 21 Statement does not comprise the Specifications, particulars

in relation to easements, information about bank guarantees, disclosure about management rights (if any) and materials which comprise the Section 213 Statement.

- (c) Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer promises the Seller that, before the Buyer signed this Contract, the Buyer:
  - (i) received the Section 213 Statement and the Section 21 Statement, signed and dated by the Seller or the Seller's authorised signatory or agent, (within the Disclosure Documents), given separately to this Contract document to the Buyer; and
  - (ii) reviewed the contents of the Section 213 Statement and the Section 21 Statement and had the opportunity to take legal advice about those statements and this Contract.
- (d) Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer acknowledges that:
  - (i) the Section 213 Statement is substantially complete for the purposes of Section 213 of the BCCM Act;
  - (ii) the Section 21 Statement is complete and satisfies all of the disclosure requirements of Section 21 of the LSA; and
  - (iii) the Buyer cannot Object, given the Buyer's promises and acknowledgments under this clause, as a result of the content or any deficiency in the Section 213 Statement or the Section 21 Statement.

**62.5 Buyer's Promise – PAMD Act & BCCM Act Directions**

Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer promises the Seller that:

- (a) when the Buyer or the Buyer's Agent received this Contract from the Seller or the Seller's Agent for signing purposes, either of the following occurred:
  - (i) in the case of the Seller or the Seller's Agent handing this Contract to the Buyer or the Buyer's Agent, the attention of the Buyer or the Buyer's Agent was verbally directed or directed in a written statement, letter or other document (or both) by the Seller or the Seller's Agent to the Warning Statement, the Information Sheet and this Contract; or
  - (ii) in any other case the Buyer or the Buyer's Agent received a written statement, letter or other document from the Seller or the Seller's Agent directing the attention of the Buyer or the Buyer's Agent to the Warning Statement, the Information Sheet and this Contract;
- (b) before the Buyer signed this Contract, the Buyer first signed and dated the:
  - (i) Warning Statement which was securely attached to this Contract; and
  - (ii) Information Sheet which was securely attached to this Contract; and
- (c) before the Buyer signed this Contract, the Buyer first received, signed and dated the PAMD Form 27c which was separately given to the Buyer by the Agent (or if there is no Agent, by the Seller, if the Seller is a property developer for the purposes of the PAMD Act).

**62.6 Use of Property & other Promises**

- (a) In this sub-clause "Personal Use" means the use of the Property by the Buyer for personal, domestic or household use or consumption.
- (b) Subject to the sub-clause below titled "Retraction of Acknowledgments or Promises", the Buyer promises the Seller that:
  - (i) its acquisition of the Property is for the purposes of Personal Use or non-Personal Use as elected by the Buyer in the Reference Schedule and that the election noted on the Reference Schedule is correct as at the Contract Date;
  - (ii) the Buyer has, before signing this Contract, read this Contract and the disclosure, materials, statements and notices contained within the Disclosure Documents (or has been given an opportunity to do so) and took or was given an opportunity to take legal advice and any other advice the Buyer considered appropriate about this Contract and the content of the Disclosure Documents;
  - (iii) the Buyer, before signing this Contract, was given an effective opportunity by the Seller and/or the Seller's agents to negotiate the terms of this Contract, including an opportunity to reject its terms, and that, accordingly, in making this Contract, the Buyer has either negotiated those terms or chosen not to negotiate those terms;
  - (iv) the Buyer agrees that the Contract Terms are reasonable and balanced as between the rights and obligations of the Buyer and the Seller; and
  - (v) the Buyer agrees that the Contract Terms, in particular terms that:

- (A) permit Variations to the Development, the Common Property, the Principal Scheme, the Subsidiary Scheme, the Building or the Property;
- (B) permit termination and dealings with the Deposit and Interest on termination;
- (C) limit the ability of the Buyer to Object or participate in the Subsidiary Body Corporate objecting to specified matters;
- (D) limit the right of the Buyer to object to, or refrain from providing consent for, the further carrying out of the Development, the Principal Scheme or the Subsidiary Scheme; and
- (E) provide a right of the Deposit Holder to invest the Deposit on terms and at an interest rate determined by the Deposit Holder in its total discretion,

are reasonably necessary and required to protect the legitimate interests of the Seller given the nature of the Property sold (it being sold "off the plan").

## 62.7 *Principal CMS & Proposed Subsidiary CMS*

Subject to the sub-clause below titled "Retraction of Acknowledgements or Promises" the Buyer acknowledges that:

- (a) the Buyer has received, before entry into this Contract, a copy of the Principal CMS and the Proposed Subsidiary CMS (contained in the Disclosure Documents);

- (b) the Principal CMS and the Proposed Subsidiary CMS each comply with all of the requirements for a community management statement under Section 66 of the BCCM Act;
- (c) the explanation or details in the Principal CMS and the Proposed Subsidiary CMS about the contribution and interest entitlements for lots in the Principal Scheme and the Subsidiary Scheme (respectively) are:
  - (i) written in plain English; and
  - (ii) simple enough and only as detailed as necessary for an ordinary person (including the Buyer) to understand the explanation or details;
- (d) the Buyer, before entry into this Contract, reviewed the Principal CMS and the Proposed Subsidiary CMS and had the opportunity to take legal advice about those statements and this Contract; and
- (e) the Buyer cannot Object, given the Buyer's acknowledgements under this clause as a result of the content or any deficiency in the Principal CMS or the Proposed Subsidiary CMS.

## 62.8 *Retraction of Acknowledgements or Promises*

- (a) Subject to sub-clause (b) below, if within 5 Business Days after the Contract Date the Buyer wishes to retract or vary any or all of the acknowledgements or promises made in this clause, the Buyer must give notice to the Seller of such in which case:
  - (i) the Buyer is taken to have given the Seller notification that the Buyer terminates this Contract;
  - (ii) the Seller is taken to have accepted the Buyer's notification of termination;
  - (iii) this Contract is at an end and neither Party has any further Claim against the other; and

- (iv) the Deposit paid and Interest must be released to the Buyer.
- (b) Sub-clause (a) above does not apply if:
  - (i) the Buyer has given to the Seller a Lawyer's Certificate in relation to this Contract; and/or
  - (ii) the Buyer has obtained pre-contract legal advice in relation to this clause.

### 63. Seller's Promises

The Seller promises the Buyer that it:

- (a) acknowledges the Buyer's acknowledgements and promises contained in the preceding clause; and
- (b) will rely on the Buyer's acknowledgements and promises contained in the preceding clause in its conduct of the transaction arising out of this Contract and all matters incidental to it.

### 64. Section 214 BCCM Act & Section 22 LSA

- 64.1 In relation to any obligation the Seller has under Section 214(2) of the BCCM Act ("Section") to give a "further statement", for the purposes of the Section, the Parties agree that the Seller may give the Buyer the "further statement" at any time up to the later of:
  - (a) 5.00pm on the date the Seller gives notice to the Buyer calling for Settlement; and
  - (b) the time the Seller is required to give the "further statement" under the Section.
- 64.2 The Parties agree that no notice or further disclosure of any kind made by the Seller to the Buyer constitutes a "further statement" for the purposes of Section 214 of the BCCM Act unless any such notice or disclosure specifically states that it is intended to constitute such a further statement.
- 64.3 If the Buyer proposes to give a notice terminating this Contract under Section 214(4) of the BCCM Act, despite the provisions of that Section the Buyer agrees that it will deal with the Seller justly and fairly by giving to the Seller before or at the same time that any such notice is given, written details clearly outlining how the Buyer would be materially prejudiced if

compelled to complete this Contract given the extent to which the Section 213 Statement was, or has become, inaccurate.

- 64.4 In relation to any obligation the Seller has to give the Buyer further or rectifying disclosures or statements, including under:

- (a) Section 214(2) of the BCCM Act to give a "further statement"; or
- (b) Section 22(1) of the LSA to give a statement rectifying inaccuracies,

without limiting the way such further or rectifying disclosure or statements may be given, such further disclosure or statements (however categorised) may be given in the form of a letter (with or without attachments) from the Seller's Solicitor (signed by the Seller's Solicitor as the Seller's duly authorised signatory/agent) to the Buyer's Solicitor, who, the Buyer agrees, is the duly authorised agent of the Buyer to receive the further or rectifying disclosure or statement.

- 64.5 If the annual contributions payable by the Buyer are up to 10% more than the annual contributions set out in the Section 213 Statement for the first year after the levies are struck, the Buyer agrees that the Buyer:

- (a) will not be materially prejudiced if compelled to complete this Contract; and
- (b) has no right to Object.

- 64.6 Nothing contained in sub-clause 5 implies a term in this Contract or an agreement between the Parties that the Buyer will be materially prejudiced if the annual contributions payable by the Buyer are 10% or more than the annual contributions set out in the Section 213 Statement for the first year after the levies are struck.

### 65. Other Service Contracts

- 65.1 The Seller directs the attention of the Buyer to the parts of the Section 213 Statement (contained in the Disclosure Documents) titled "Other Service Contracts" or similar. As foreshadowed in that disclosure, the Seller may cause the Subsidiary Body Corporate to engage other contractors or other service contractors for various purposes but the terms of any such engagements and other particulars required to be included in a Section 213 Statement will not be known as at the Contract Date. The Seller may give a "further statement" under Section 214 of the BCCM Act if, after the Contract Date, it is determined that

the Subsidiary Body Corporate, when it is established or changed, will enter into one or more further engagements of service contractors (for example, for the supply and maintenance of utility infrastructure and/or the supply of utilities). If that happens, the Buyer must not Object and agrees that:

- (a) the Section 213 Statement does not fail to be substantially complete for the purposes of Section 213 of the BCCM Act merely because, at the time it was initially given, it did not include details of the further contractor or service contractor; and
- (b) given the disclosure made by the Seller in the Section 213 Statement about the possibility of the engagement of further contractors or service contractors, the Buyer will not be materially prejudiced if compelled to complete this Contract given the extent to which the Section 213 Statement was, or has become, inaccurate, due to the introduction of and disclosure about additional engagements of service contractors as disclosed to the Buyer by way of a further statement under Section 214 of the BCCM Act.

#### 66. Buyer's Managed Investment Act Acknowledgement

"Letting Agent" means the manager who is to be appointed as letting agent for the Subsidiary Scheme pursuant to the Subsidiary Management Engagement & Letting Authorisation Agreement.

"RG140" means the ASIC Regulatory Guide 140 issued 13 November 2000 in regard to Serviced Strata Schemes as amended from time to time.

##### 66.1 The Buyer acknowledges that:

- (a) RG140 represents the ASIC's interpretation of the application of the managed investment provisions contained in Chapter 5C of the *Corporations Act 2001 (Cth)* ("Corporations Act");
- (b) for a serviced strata apartment complex which is a managed investment scheme, the Corporations Act requires, amongst other things, that the managed investment scheme be registered, that the operator of the

managed investment scheme be licensed and a prospectus be issued;

- (c) neither the Seller or the Letting Agent proposes to conduct a serviced apartment operation at the Subsidiary Scheme;
- (d) there is no obligation on a buyer of an apartment to make their apartment available to the Seller or Letting Agent for letting to prospective tenants;
- (e) no apartment in the Subsidiary Scheme will be made available for letting on an overnight or short term basis;
- (f) there is no understanding between or amongst buyers of apartments and the Seller or Letting Agent that apartments made available to the Letting Agent for letting to prospective tenants will be let on a rotational or other basis, it being accepted that a tenant will have right to select an apartment and may have a preference for a particular apartment; and
- (g) if a buyer of an apartment makes that apartment available to the Letting Agent for letting to prospective tenants:
  - (i) it is the intention that any letting will be for a period of not less than 90 days; and
  - (ii) there will be no pooling of rental income between the apartments.

66.2 In view of the acknowledgements contained in sub-clause 1, the Seller does not consider its sale of apartments or the operation of the letting business to be conducted by the Letting Agent to be a serviced strata scheme, and is therefore not subject to the provisions of RG140 or Chapter 5C of the Corporations Act.

##### 66.3 The Buyer acknowledges that:

- (a) it has been given the opportunity to obtain independent legal advice in relation to RG140 and Chapter 5C of the Corporations Act, including the rights the Buyer may have under Section 601MB of the Corporations Act;

- (b) if it is determined that a serviced strata scheme is being operated at the Subsidiary Scheme (whether by the Seller or the Letting Agent) then it would not be just and equitable for the Buyer to invoke the provisions of Chapter 5C of the Corporations Act, including Section 601MB; and
- (c) the Seller will be relying on the terms of this clause to obtain finance for the purpose of constructing the Subsidiary Scheme.

## P. POWER OF ATTORNEY

### 67. Power of Attorney

67.1 So far as is lawful, the Buyer irrevocably appoints, on a joint and several basis:

- (a) the Seller; and
- (b) if the Seller is a company or company trustee, each director, secretary and principal officer of the Seller,

to be an attorney of the Buyer ("Attorney") on the terms and for the purposes set out in this clause.

67.2 The Power of Attorney may be used for the following purposes:

- (a) in relation to Subsidiary Body Corporate matters:
  - (i) to attend and vote (or do either) in the name of the Buyer at all or any meetings of the Subsidiary Body Corporate or the Committee; and
  - (ii) to complete, sign and lodge any voting paper (or any other document including a proxy, appointment form, corporate owner nominee notification form or other representative notification form and any other notice under the Regulation Module) to allow the Seller to vote in the name of the Buyer at all or any meetings of the Subsidiary Body Corporate or of the Committee,

in respect of any motion or resolution for or relating to any one or more of the

matters or things set out in the Power of Attorney disclosure contained in the Disclosure Documents; and

- (b) in relation to other matters:
  - (i) to complete, sign and lodge with the Queensland Land Registry any request to withdraw a caveat or like instrument lodged and/or registered by the Buyer over the Parcel or the Scheme Land; and
  - (ii) to complete, sign and lodge any instrument of consent to any application for approval for the further carrying out of the Development or any part of it providing such application is for an approval which, if granted and given effect to, will not have a direct material adverse effect on the use or the value of the Property.

67.3 The Power of Attorney commences on the Contract Date and ends on the latest date permitted by Section 219(3) of the BCCM Act and not sooner than that date.

67.4 The Parties agree that the Power of Attorney is a "power of attorney given as security" in terms of Section 10 of the *Powers of Attorney Act 1998* (Qld) and, as far as it is lawful, the rights of an Attorney under this clause can be exercised in the total discretion of the Attorney and to the exclusion of the Buyer. Without limitation, the rights of the Attorney under this clause can be exercised:

- (a) even if the exercise involves a conflict of interest or duty; and
- (b) even if the Attorney has a personal interest in doing so.

67.5 If the Seller is a company or company trustee, the Power of Attorney may be exercised by an authorised corporate representative of the Seller.

67.6 The Buyer must, as directed by the Seller, ratify and confirm any action taken by an Attorney in exercise of the Power of Attorney.

67.7 While the Power of Attorney remains in effect, the Buyer must not transfer or assign the Lot

except to a transferee or assignee who has first given a power of attorney in favour of the Seller (and, so far as it is lawful, if the Seller is a company or company trustee, a power of attorney in favour of each director, secretary and principal officer of the Seller) on the same terms as the Power of Attorney. If the Buyer does not comply with this provision, the Buyer indemnifies the Seller against all loss and damage incurred by the Seller as a result.

67.8 If directed to do so by the Seller at any time, the Buyer must, at the Buyer's expense, take all steps available in order to give full effect to the Power of Attorney including signing and completing any further instrument provided by the Seller.

67.9 So as to ensure the validity of the Power of Attorney, the Buyer's signing of the Contract must be witnessed. The Seller may at any time declare itself not bound by this Contract until such time as the Buyer's signing has been properly witnessed.

67.10 For the purposes of this clause, the Seller includes any assignee of the Seller.

#### **Q. STAGED SETTLEMENTS**

##### **68. Staged Settlements**

68.1 The Seller may elect to effect settlement of the sale of the various lots within the Subsidiary Scheme at different times on a staged basis ("Staged Settlements").

68.2 The Buyer acknowledges that if the Seller elects to effect Staged Settlements, construction works of some parts of the Subsidiary Scheme (lots and Common Property) may continue to be undertaken after Settlement.

68.3 The Buyer will not Object to the Seller effecting Staged Settlements and the Buyer will not Object to continued construction activities within the Subsidiary Scheme including:

- (a) building improvements or any other things done on or within the Parcel or the Scheme Land including any noise, nuisance or other inconvenience which may arise from those activities;
- (b) the use by the Seller and any party authorised by the Seller of parts of the Subsidiary Scheme or the Principal Scheme (including Common Property)

for construction access and the storage of building materials, vehicles, equipment or fuel; and

- (c) the Seller and any party authorised by the Seller causing areas within the Subsidiary Scheme or the Principal Scheme to be temporarily closed off to facilitate the continued construction of the Subsidiary Scheme,

despite these things occurring after Settlement even if for an extended period after Settlement provided that the Seller must take reasonable measures to cause as little interference to the Buyer's quiet use and enjoyment of the Property after Settlement as is reasonably possible (taking into account the nature of the continued construction and activities which may be required by the Seller).

#### **R. GENERAL**

##### **69. Status of Promises**

Where in these Contract Terms or in the Special Conditions a promise has been made by a Party:

- (a) the promise amounts to a representation, warranty and/or assurance made by the Party to the other Party;
- (b) the Party to whom the promise is made is entitled to rely on that promise; and
- (c) the Buyer acknowledges that it has made the promise as an inducement outside of this Contract to the Seller to enter into this Contract to sell the Property.

##### **70. Reliance on Acknowledgements and Agreements**

70.1 The Buyer acknowledges that the Seller has agreed to enter into this Contract in reliance upon the various promises, acknowledgements and agreements made by the Buyer in this Contract.

## **71. Buyer's Obligation to Disclose Rebates etc**

71.1 If the Buyer receives or takes from the Seller the benefit of any form of rebate of a portion of the Price or other concession or valuable consideration (such as a contribution towards payment of Body Corporate levies, payment of transfer duty or a rental guarantee or like instrument) or other advantage under this Contract, the Buyer promises the Seller that the Buyer will fully disclose that fact to all parties who may have an interest in knowing about it, including the Buyer's financier and any party who buys the Property from the Buyer.

71.2 The Buyer promises the Seller that it will not make any false declaration in respect of this Contract and the conveyance of the Property made pursuant to it.

71.3 The Buyer consents to the Seller disclosing any such rebate, concession or valuable consideration to any Buyer's financier or any other interested party.

## **72. Legislative Termination Rights**

72.1 This clause applies if the Seller forms a view, reasonably held, that the Buyer is or has become entitled to cancel, withdraw from or terminate this Contract or declare itself not bound by this Contract under any legislative provision ("Legislative Termination Right").

72.2 If this clause applies, then during the time that the Buyer is entitled to exercise the Legislative Termination Right, the Seller may give a notice to the Buyer requiring that the Buyer, within a period of 10 Business Days after the notice is given, either:

- (a) exercise its Legislative Termination Right (and cancel, withdraw from or terminate this Contract); or
- (b) by notice to the Seller affirm this Contract and waive the benefit of the Legislative Termination Right,

failing which the Seller may, at any time after expiry of the 10 Business Day period, and while the Buyer is entitled to exercise the Legislative Termination Right, itself terminate this Contract. If that happens:

- (i) the Deposit and Interest must be released to the Buyer; and

- (ii) the Buyer has no further Claim against the Seller.

## **73. Interpretation**

### **73.1 References**

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate;
- (d) a party includes the party's executors, administrators, successors, and permitted assigns; and
- (e) dimensions include the area of the thing for which the dimensions have been given.

### **73.2 Use of word "including"**

The use of the word "including" (and any similar expression) is not used as a word of limitation.

### **73.3 Use of word "attached"**

The use of the word "attached" (and any similar expression) where the context requires, means attached in a secure way, so that the Warning Statement, Information Sheet and this Contract document appear to be a single document.

### **73.4 Use of the word "or"**

In any combination or list of options, the use of the word "or" is not used as a word of limitation.

### **73.5 Headings**

Headings are for convenience only and do not form part of this Contract or affect its interpretation.

### **73.6 Parties**

- (a) If a Party consists of more than one person, this Contract binds them jointly and each of them individually; and
- (b) A Party that is a trustee is bound both personally and as a trustee.



### **73.7 Statutes and Regulations**

Reference to statutes and regulations includes all statutes and regulations amending, consolidating, or replacing them.

### **73.8 Inconsistencies**

If there is any inconsistency between the Contract Terms and any provision added to this Contract (including those added by Special Condition), the added provision prevails.

### **73.9 Interpretation to Favour Binding Contract**

- (a) Subject to the terms of this Contract, the Parties acknowledge that it is their intent that the Seller is obliged to sell and the Buyer is obliged to buy the Property on the terms set out in this Contract.
- (b) If a provision of this Contract or any legislation is (in the context of whether or not this Contract is valid and binding) open to interpretation, then such provision or legislation must be read or interpreted so that the Contract is found to be valid and binding on the Parties.
- (c) To the fullest extent permissible, the Parties agree that to resolve any ambiguity, omission or defect in this Contract, a Court may imply any term or modify any term as is necessary to give effect to this Contract.

### **73.10 Clauses permitting Variations**

Any provision of this Contract which permits or authorises a Variation does not limit a Variation permitted or authorised by any other provisions of this Contract.

### **74. Performance of Contract**

The Seller is entitled to perform this Contract in a manner which is most beneficial to it.

### **75. Time**

- 75.1 Time is of the essence of this Contract, except regarding any agreement between the Parties on a time of day for Settlement. This is an Essential Term but does not affect the rights of the Seller elsewhere in this Contract to extend the Settlement Date.

- 75.2 If a date by which something under this Contract must be done is extended by agreement between the Parties or by right of a Party under this Contract, for example, the date for payment of the Deposit or the Settlement Date, then, despite the extension, time remains of the essence of this Contract whether or not the terms of the agreement or notification recording the extension specified that time is to remain of the essence as a term of the agreement or notification to extend.

### **76. Measurement of Time**

In relation to measurement of time:

- (a) where a period of time runs from a given day or the day of an act or event, it must be calculated exclusive of that day; and
- (b) a day is the period of time commencing at midnight and ending 24 hours later.

### **77. Due date not Business Day**

If something under this Contract has to be done on a day that is not a Business Day, then that thing must be done on the next Business Day.

### **78. Things to be done by 5.00pm**

If this Contract provides for something to be done by a certain date, the Buyer must do so by 5.00pm, Brisbane time, on that date.

### **79. Contract Date**

This clause applies if following exchange of this Contract, the Contract Date in the Reference Schedule has not been completed. The Contract Date will be taken to be the date that the last Party to sign this Contract has communicated to the other Party that this Contract has been signed. Each Party authorises the other Party (as relevant) to complete the Contract Date in the Reference Schedule if required.

### **80. Risk**

The Property is at the Seller's risk until Settlement.

## 81. Costs and Transfer Duty

81.1 Each Party must pay its own costs on this Contract.

81.2 The Buyer:

- (a) must pay all transfer duty on this Contract and the Transfer Documents; and
- (b) indemnifies the Seller in respect of all liability for payment of transfer duty on this Contract and the Transfer Documents.

## 82. Notices

82.1 Notices under this Contract must be in writing (which may include email in circumstances set out in sub-clause 6) signed by a Party or its solicitor. Notices are considered to be signed if signed by electronic signature.

82.2 Notices are effectively given if:

- (a) delivered or posted to the address of the other Party or its solicitor; or
- (b) sent to the facsimile number of the other Party or its solicitor,

which are set out in the Reference Schedule as varied by notice. If the Buyer is no longer represented by a solicitor and has no current known contact particulars for the giving of a notice, the Seller may give notice to the Buyer's last known contact particulars even if it is known to the Seller that the Buyer may not receive the notice (the onus is on the Buyer to ensure that the Seller at all times has relevant notice particulars of the Buyer in order to enable the Seller to give notice. If the Buyer does not do so the Seller may give notice as provided for in this clause to enable the Seller to perform the Contract and exercise its contractual rights).

82.3 Posted notices will be treated as given 2 Business Days after posting.

82.4 Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.

82.5 Notices by a Party's solicitor to the other Party or its solicitor (for example, varying the Settlement Date or other term of this Contract)

will be treated as given with the first Party's authority.

82.6 The Seller may send notices by email to the Buyer and its solicitor. Such notice will be taken as validly given if the Seller receives an electronic notification that the email was delivered to the recipient. The Seller may, in the Seller's discretion, notify the Buyer that it will also accept notices from the Buyer in email format on the same terms.

82.7 For the purposes of Section 11 and 12 of the *Electronic Transactions Act 2001 (Qld)*, the Parties consent to information being given by electronic communication.

82.8 For the purposes of Section 191 of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008 (Qld)*, the Buyer authorises the Seller and the Seller's Solicitor to act as its agent to give notice to the Body Corporate after Settlement that the Buyer has become the owner of the Lot. The Seller is authorised to use the latest contact particulars of the Buyer given to it by the Buyer or the Buyer's Solicitor for the purposes of giving the notice to the Body Corporate and if no such particulars have been given, then the Buyer's particulars in the Reference Schedule.

## 83. Sale of Lots

83.1 The Seller reserves the right to use any lot (other than the Lot) in the Subsidiary Scheme as a display unit for the sale of lots in the Subsidiary Scheme. The Buyer agrees not to Object to such use of any lot in the Subsidiary Scheme, nor to the display of advertising material on the Common Property.

83.2 The Seller (together with its guests and invitees) reserves the right to use any part of the Development including the Common Property for the purposes of promotional functions associated with the opening and marketing of the Subsidiary Scheme. The Buyer agrees not to Object to that use of such areas by the Seller.

## 84. Variation

84.1 An amendment or variation to this Contract is not effective unless it is in writing and signed by or on behalf of the Parties. Amendments or variations are considered to be signed if signed by electronic signature.

84.2 Any variation to this Contract which is agreed to in writing by the Buyer's Solicitor is immediately binding on the Buyer as if the Buyer had personally agreed to the variation in writing.

84.3 On each occasion that the Buyer's Solicitor agrees in writing to a variation to this Contract, the Buyer warrants that the Buyer's Solicitor was duly authorised to agree to that variation on behalf of the Buyer.

## 85. Waiver

85.1 Notwithstanding that the law of contract may no longer recognise or might never have recognised a doctrine or concept of waiver, a Party may waive its right to insist upon the performance of a condition or obligation under this Contract which is to be performed by the other Party provided such waiver is in writing and signed for or on behalf of the Party waiving the right to performance of such obligation or condition.

85.2 In the absence of a waiver in writing as permitted by sub-clause 1, no failure or forbearance by a Party to insist upon any right to performance of a condition or obligation of the other Party can amount to, under any circumstances, an election between existing rights, a representation sufficient to ground an estoppel or a variation whereby that other Party is relieved or excused from performance of such condition or obligation.

## 86. Severance

If it is held by a Court that:

- (a) any part, clause or part of a clause of this Contract is void, voidable, illegal or unenforceable or a penalty; or
- (b) this Contract is void, voidable, illegal or unenforceable unless any part, clause or part of a clause of this Contract is severed from this Contract,

that part, clause or part of the clause will be severed from this Contract unless to do so would change the underlying principal commercial purposes of this Contract.

## 87. Rights After Settlement

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

## 88. Applicable Law

Queensland Law applies to this Contract.

## 89. Further Acts

89.1 If requested by the other Party, each Party must, at its own expense, do everything reasonably necessary to give effect to this Contract.

89.2 Without limiting sub-clause 1, if requested to do so by the Seller, the Buyer must, at its own expense and within a reasonable period of time (and, in any event, before Settlement):

- (a) do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is possible and lawful to do so) or resolve any ambiguity in this Contract so as to facilitate this Contract being given effect to and being operative and enforceable as between the Parties; and
- (b) do all things, sign all documents, give all necessary consents, enter into all necessary agreements or deeds as requested by the Seller in order to enable the Seller to perform its obligations under this Contract (**Additional Obligations**) and in order to enable Settlement even if Additional Obligations are imposed on the Buyer providing that the rights of the Buyer under this Contract are not significantly diminished.

89.3 If the rights of the Buyer under this Contract are significantly diminished as a result of a request by the Seller pursuant to sub-clause 2, the Buyer must carry out the requested action if:

- (a) the Buyer became aware or ought to have become aware of the possible diminution of rights as part of any reasonable enquiries carried out before the Contract Date; or
- (b) the Buyer became aware or ought to have become aware of the possible diminution of rights as part of any reasonable enquiries carried out after the Contract Date; or
- (c) the Seller offers to provide reasonable compensation to the Buyer to offset the diminution of rights.

89.4 Without limiting sub-clause 1, if requested to do so by the Seller, the Buyer must, at its own expense, do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is lawful to do so) or resolve any ambiguity in this Contract so as to facilitate this Contract being considered by the Seller's construction financier as a presale for construction funding purposes.

**90. Instalment Contracts**

90.1 In this clause:

"PLA Act" means the *Property Law Act 1974 (Qld)*.

"Instalment Contract" has the meaning given to it under Section 71 of the PLA Act.

90.2 If:

- (a) it is found that this Contract is an Instalment Contract; or
- (b) any interpretation of any annexure or Special Condition causes this Contract to be or become an Instalment Contract; or
- (c) any negotiation or agreement reached between the Seller and the Buyer following formation of this Contract causes this Contract to be or become an Instalment Contract,

then the Buyer consents for the purposes of Section 73(1) of the PLA Act to the Seller:

- (i) mortgaging or charging the Parcel, the Scheme Land or any part of it (including the Property) on terms and conditions the Seller in its total discretion determines; and
- (ii) selling parts of the Parcel or the Scheme Land or any part of it (but not the Property unless the whole of the Parcel or the Scheme Land is being sold).

90.3 Despite any contrary provision in this Contract including a contrary provision contained in the Special Conditions, the Buyer is not bound to make a payment or payments of amounts which total in excess of 10% of the Price (including any variations) without becoming

entitled to receive a conveyance in exchange for the payment or payments. If the Buyer pays more than 10% of the Price as deposit, the Buyer is entitled to a refund of the amount in excess of 10% upon request to the Seller. If the Seller refunds an amount paid in excess of the 10% deposit, the Buyer will still be required to pay the Price less any cash deposit paid at Settlement.

90.4 Nothing in this Contract permits the Buyer to elect that the Contract be performed in a manner which would constitute it to be an Instalment Contract.

90.5 The provisions of this clause are mandatory overriding provisions and override any other provision of this Contract including the Special Conditions. The Buyer is not bound to make payment or payments of amounts which total in excess of 10% of the Price without being entitled to receive a conveyance in exchange for the payment or payments.

**91. No Caveats**

91.1 The Buyer must not lodge or register any caveat over the Parcel or the Scheme Land or any part of it.

91.2 Nothing in sub-clause 1 limits any rights of the Buyer to lodge or register a caveat over the Lot but only after Title is created.

**92. Settlement Notice**

The Buyer may lodge a "settlement notice" over the Title with the Queensland Land Registry but not before the date which is 5 Business Days prior to the date fixed as the Settlement Date.

**93. Sale of Parcel**

93.1 The Seller may at any time without the consent of the Buyer assign its interest in the Parcel or the Scheme Land to another person. The Buyer consents to such assignment for the purposes of Section 73(1) of the *Property Law Act 1974 (Qld)*.

93.2 If the Seller assigns the Parcel or the Scheme Land as contemplated by sub-clause 1, then the Seller must deliver to the Buyer:

- (a) notice of assignment of this Contract in accordance with Section 199 of the *Property Law Act 1974 (Qld)*; and

- (b) a deed poll signed by the assignee, under which the assignee agrees to be bound by the obligations of the Seller under this Contract.

93.3 Upon delivery to the Buyer of the notice and deed in accordance with sub-clause 2:

- (a) the Seller is released from all liabilities and obligations to the Buyer under this Contract;
- (b) the Buyer and any Guarantor (if any) become bound by the terms of this Contract but in favour of the assignee, as if the assignee was originally named in this Contract instead of the Seller;
- (c) the Buyer must, within 10 Business Days, if the Buyer has secured payment of the Deposit by way of lodgement of a bank guarantee or Deposit Bond, which bank guarantee or Deposit Bond cannot be assigned to the assignee, replace the bank guarantee or Deposit Bond with either a cash Deposit or a new bank guarantee or Deposit Bond which specifies the assignee as the Seller; and
- (d) any cash Deposit will be held for the benefit of the Buyer and the assignee on the terms of this Contract.

#### 94. Name

94.1 The Seller may do any one or more of the following (and the Buyer must not Object if the Seller does so):

- (a) register, in favour of the Seller or any other party determined by the Seller the Name as a business name, trademark or similar;
- (b) license to the Subsidiary Body Corporate the right to use the Name as the name or part of the name of the Subsidiary Scheme;
- (c) transfer to any party, including any service contractor, letting agent or manager of the Subsidiary Scheme, any proprietary rights held by the Seller in the Name (whether by business name, trademark or similar); and

- (d) license to any party, including any service contractor or letting agent, the right to the use of the Name.

94.2 The Buyer agrees that as at the Contract Date, the Seller intends the name for the Subsidiary Scheme to be the Name. If the Local Government or the Queensland Land Registry refuses to accept the Name, or the Name is not available due to any other reason or the Seller wishes to change the name for the Subsidiary Scheme, the Seller may, at its total discretion, elect an alternative name for the Subsidiary Scheme. If this happens, the Buyer agrees that it must not Object.

#### 95. Privacy Notice & Acknowledgement

95.1 The Seller's policy is to comply fully with the National Privacy Principles for the fair handling of personal information as set out in the *Privacy Act 1988 (Cth)* (as amended) ("Privacy Act").

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

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

95.4 The Seller may disclose the personal information of the Buyer and any Guarantors as may be required to the Seller's consultants, related companies, contractors, financiers, credit providers, insurers, marketing agents, sales agents, rental agents, the letting agent and staff, to any government body charged with the responsibility of recording transactions relating to the transfer of land or as otherwise required by the condition of or to give effect to or comply with any governmental approval relating to the Development.

95.5 The Buyer's failure to provide accurate and up to date personal information may mean that the Seller cannot proceed with this Contract.

95.6 The Seller may also disclose to a Credit Reporting Agency pursuant to Section 18E(8)(c) of the Privacy Act personal information relating to any application for finance or credit that the Buyer may make through or with the Seller's assistance.

95.7 The Buyer and the Guarantors (if any) consents to the Seller using the Buyer's information in the Seller's absolute discretion for the purposes, uses and disclosures described above, or in the Seller's opinion related to them, and acknowledges that in providing consent to the disclosure and use of their personal information that such information may be utilised for any other authorised purpose under Part IIIA of the Privacy Act (as amended).

## **96. Resale of Property**

96.1 The Buyer must not sell, transfer, dispose or otherwise deal with the Property in a similar manner without the prior written consent of the Seller, such consent not to be unreasonably withheld by the Seller. It will be reasonable for the Seller to withhold their consent if the Seller has not yet obtained sufficient presales of lots in the Subsidiary Scheme to enable the Seller to obtaining funding to build the Building and undertake the Subsidiary Scheme.

96.2 If the Seller does consent to the dealing, it is a condition of the Seller's consent that the Buyer must immediately give to the Seller:

- (a) details of such sale including:
  - (i) purchase price;
  - (ii) identity of new buyer; and
  - (iii) contact details of the new buyer;
- (b) a copy of the power of attorney in favour of the Seller required to be obtained from the new buyer; and
- (c) any other information reasonably required by the Seller.

96.3 The Buyer acknowledges its obligations on the sale, transfer or other disposal of the Property in the clauses titled "Buyer's Consent – Further Development" and "Power of Attorney".

## **97. Representation on Views**

97.1 This clause applies in relation to any representations made by or on behalf of the Seller about potential views available from the Building or the Lot at or after Settlement. Without limitation, such representations may have been made to the Buyer as follows:

- (a) orally;
- (b) by depiction in photographs and/or commentary; or
- (c) by actual viewing by the Buyer onsite from any viewing platform or apparatus,

(the **View Representations**).

97.2 The Buyer acknowledges that:

- (a) the Seller has no control over future development by parties unrelated to the Seller of properties surrounding the Parcel and the Scheme Land; and
- (b) if properties surrounding the Parcel and the Scheme Land are developed, such development may interrupt the views from the Building or the Lot as compared to those represented in any View Representations.

97.3 The Buyer must not Object as a result of the actual views available to the Buyer from the Building and/or the Lot at or after Settlement not being the same as the potential views represented in any View Representations because any development surrounding the Parcel and the Scheme Land which occurs before or after Settlement restricts (whether wholly or partially) the actual views available to the Buyer.

## **98. Provision of Information**

98.1 The Buyer acknowledges that the Seller may provide information regarding the Subsidiary Scheme (including a copy of the certificate classification, certificate of currency for Body Corporate insurance, etc) to the Buyer by way of an online data room.

- 98.2 If information is provided in this manner, the Seller will inform the Buyer and provide all necessary information to access the data room to the Buyer and the Buyer must not Object to information being provided in this manner.

**99. Entire Agreement**

This Contract contains the entire terms agreed between the Seller and the Buyer and supersedes all prior negotiations.

**100. Assignment**

- 100.1 The Buyer must not assign or novate its interest in this Contract without the prior written consent of the Seller, such consent to be determined by the Seller in its total discretion.

**101. Electronic Conveyancing**

- 101.1 The Seller is in no way obliged or required to carry out or perform the conveyance under this Contract or Settlement under any electronic conveyancing or similar system, unless required to do so by law.
- 101.2 The Seller may, in its total discretion, require the Parties to use any electronic conveyancing or similar system to carry out or perform the conveyance of this Contract or any part of it or to carry out or perform Settlement.
- 101.3 If Seller elects to exercise any right under sub-clause 2, the Buyer must carry out or perform the conveyance under this Contract or Settlement in the manner in which the Seller has elected.
- 101.4 The Buyer must not Object because of any of the matters contained in this clause or the exercise or non exercise of rights by the Seller pursuant to it.

**102. Special Conditions**

The Special Conditions annexed to this Contract form part of this Contract and override any inconsistent term of the Contract Terms.

## PRE-CONTRACT REPRESENTATIONS – IMPORTANT NOTICE

No sales or marketing agent has authority from the Seller or any related company to make representations or assurances about the Development, the Principal Scheme, the Subsidiary Scheme or the Property other than representations and assurances which are contained in this Contract or the Disclosure Documents.

Buying a property is an important investment. If the Buyer is buying the Property on the basis of anything the Buyer has been told or any assurance the Buyer has been given other than what is in this Contract or the Disclosure Documents, it is important these representations or assurances are identified so they can be confirmed or clarified before the Buyer commits to buy the Property.

The Buyer should set out below any representations or assurances that have been made to the Buyer by the Seller or any sales or marketing agent of the Seller that form part of the reason why the Buyer has elected to buy the Property but which are not included in this Contract or the Disclosure Documents:

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### SPECIAL CONDITION

#### 1. Buyer's Acknowledgment about Seller's Representations

- 1.1 The Buyer acknowledges that no sales or marketing agent has authority from the Seller to make promises, representations, warranties or assurances on behalf of the Seller.
- 1.2 The Buyer confirms and represents that the Buyer is not entering into this Contract on the basis of any promises, representations, warranties or assurances other than those set out above or set out in writing elsewhere in this Contract.
- 1.3 The Buyer understands that by the acknowledgement, confirmation and representation given in Special Conditions 1.1 and 1.2 above, it is likely that the Buyer will not be able to sue the Seller in respect of any promise, representation, warranty or assurance other than those set out above or which are set out elsewhere in this Contract.
- 1.4 In this Special Condition, unless the context otherwise requires, the term **this Contract** includes the Disclosure Documents and all statements and materials contained in them.

X INITIAL HERE

Buyer 1 Initials

Buyer 2 Initials

Seller's Initials



## SPECIAL CONDITION

### 4. FURNITURE PACKAGE

- 4.1 The Buyer and Seller agree that the Property includes those items set out in the Furniture Specification attached as Annexure A ("Furniture Package").
- 4.2 The Buyer and Seller agreed that the value of the Furniture Package is \$9,700.00 and is included in the Purchase Price.
- 4.3 The Buyer affirms clause 71 of the Contract Terms.

X INITIAL HER

Buyer 1 Initials

Buyer 2 Initials

Seller's Initials

**FURNITURE INVENTORY - 1 bedroom**

**Kitchen**

2 Accessories

**Living**

1 Three seat sofa

2 Scatter cushions

1 Rectangular Coffee Table

1 Entertainment unit with drawers

1 Rug

3 Accessories

1 Artwork

**Dining**

1 Square dining table

4 Dining chairs

1 Wall Mirror

1 Accessory for Dining table

**Outdoor**

1 Square outdoor balcony Table

2 Outdoor dining chairs

**Master bedroom**

1 Wall mounted bedhead

1 Queen Base

1 Queen Mattress

1 Queen Ensemble bedding pack (Pillows (4), Pillow protectors (4), mattress protector, valance).

2 Scatter cushions

1 Throw

2 Two draw bedside

2 Bedside lamps

1 Artwork

X INITIAL HE

**Electrical**

1 106cm Full HD LED LCD TV

1 1.5m Coaxial Cable

1 Refrigerator

1 Top load washer

X INITIAL HE

PELOTON GROUP PTY LTD ABN / 68 117 770 831

A / 7 HERCULES STREET, HAMILTON, BRISBANE QLD 4007

E / SALES@PROXIMITYHAMILTON.COM.AU

PROXIMITY

## SPECIAL CONDITION

Buyer 1 Initials

Buyer 2 Initials

Seller's Initials

# 1 BEDROOM 1 BATHROOM

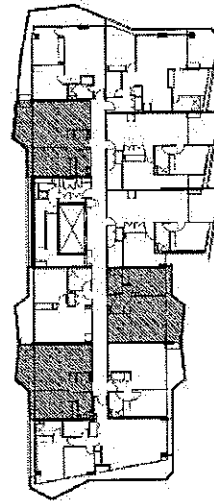
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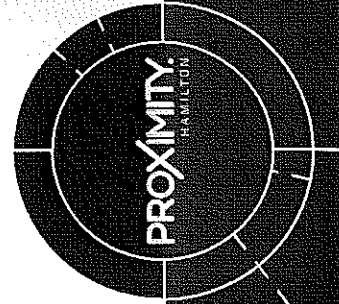
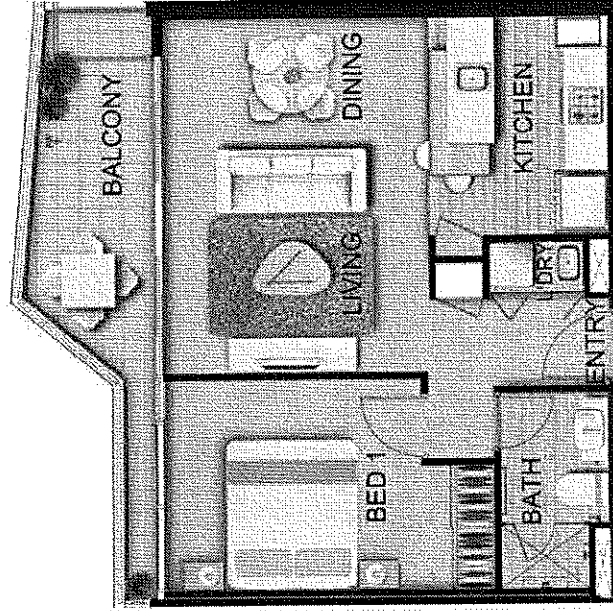
INTERNAL AREA : 50m<sup>2</sup>  
EXTERNAL AREA: 10m<sup>2</sup>  
TOTAL AREA: 60m<sup>2</sup>

X INITIAL HERE

0 0.5 1 1.5 2 2.5 3 3.5 4 4.5 5 metres



Plan indicative only and subject to Variation in accordance with the Contract Terms.  
See the Identification Plan in the Disclosure Documents for area.



PROXIMITYHAMILTON.COM.AU

7 Hercules St. Hamilton, Brisbane Qld

## SIGNING BY BUYER

The **Buyer** represents to the **Seller** that before the Buyer signed this Contract, the Buyer:

- A. read this Contract and the Development Overview;
- B. initialled and dated the front page of the Disclosure Documents;
- C. received the Section 21 Statement contained in the Disclosure Documents, signed and dated by the Seller or its authorised signatory/agent;
- D. received the Section 213 Statement contained in the Disclosure Documents, signed and dated by the Seller or its authorised signatory/agent;
- F. received, signed and dated the PAMD Form 27c;
- G. signed and dated the Warning Statement attached to this Contract; and
- H. signed and dated the Information Sheet attached to this Contract.

Buyer 1 Initials

Buyer 2 Initials

**Buyer's Signature** (Signing by individual Buyer(s))

**FULL SIGNATURE(S)**

**SIGNED** by the Buyer(s) named in the Reference Schedule in the presence of:

) .....  
) .....  
) .....

Witness

**[MUST WITNESS]**

Note Buyer must be 18 years or over

NOTE: The signing of this Contract must be witnessed. Witness must be 18 years or over and not a party to the Contract

**Buyer's Signature** (Signing by Company Buyer)

**FULL SIGNATURE(S)**

**SIGNED** by the Company named as Buyer in the Reference Schedule in accordance with Sections 126 or 127 of the *Corporations Act 2001 (Cth)* in the presence of:

) .....  
) Director/Sole Director  
) .....  
) Director/Secretary

Witness

**[MUST WITNESS]**

NOTE: The signing of this Contract must be witnessed. Witness must be 18 years or over and not a party to the Contract

## SIGNING BY SELLER

**Seller's Signature**

**SIGNED ON BEHALF** of OAKSTEAD HARBOUR PROJECT PTY LTD A.C.N. 161 237 047 by its authorised signatory in the presence of:

) .....  
) .....  
) .....

Witness

**[MUST WITNESS]**

### Warning

The Seller has not authorised any party to make representations on its behalf regarding any onsale of the Property before Settlement. The Seller repudiates any such representation purported to be made on its behalf and disclaims any liability for any such representation.

# DEED OF GUARANTEE AND INDEMNITY

## ("Guarantee and Indemnity")

TO: OAKSTEAD HARBOUR PROJECT PTY LTD A.C.N. 161 237 047

("Seller")

RE: Contract for the sale and purchase of the Property to be made between the Seller and the Buyer named in the Reference Schedule (in the Contract)

("Contract")

FROM: The Guarantor named in the Reference Schedule (in the Contract)

1. In consideration of the Seller agreeing at the request of the Guarantor to enter into the Contract, the Guarantor:
  - 1.1 unconditionally and irrevocably guarantees to the Seller on demand the due and punctual performance by the Buyer of all of its obligations under the Contract; and
  - 1.2 as a separate undertaking, agrees to unconditionally and irrevocably indemnify the Seller against all liability, damages, costs, expenses and losses of any kind and however arising (including penalties, fines, interest or legal fees on a full indemnity basis) which the Seller may suffer as a result of:
    - (a) any default or breach by the Buyer of the Contract;
    - (b) a breach by the Buyer of a promise, representation, warranty or the like by the Buyer in the Contract, including any promise, representation, warranty or the like which was incorrect or misleading when made;
    - (c) any failure by the Buyer to observe a term or obligation of the Contract;
    - (d) settlement of the Contract not occurring or not taking effect; or
    - (e) the Buyer having no obligations, being relieved of any obligations or any obligations of the Buyer becoming unenforceable under the Contract.
2. The Guarantor agrees that the Guarantor's liability and obligations under this Guarantee and Indemnity are not affected by any:
  - 2.1 termination of the Contract by the Seller as a result of any default or breach by the Buyer;
  - 2.2 insolvency, bankruptcy, death, incompetency or winding up of the Buyer or of any Guarantor;
  - 2.3 assignment of the Contract by the Buyer or the Seller;
  - 2.4 grant of time or other concession to the Buyer by the Seller or to the Seller by the Buyer;
  - 2.5 compromise, waiver, variation or novation of any of the rights of the Seller against the Buyer under the Contract;
  - 2.6 delay by the Seller in exercising its rights or if the Seller does not sue the Buyer;
  - 2.7 acquiescence, acts, omissions or mistakes on the part of the Seller;
  - 2.8 purported rights of the Seller against the Buyer under the Contract being invalid, void or unenforceable for any reason including by operation of law or statute;
  - 2.9 future variations or alterations to the Contract agreed between the Buyer and the Seller, regardless of whether the Guarantor has first consented to the variation or alteration and regardless of any prejudice to the Guarantor arising from that variation or alteration;
  - 2.10 other person who was named, intended or required to enter into this Guarantee and Indemnity has not done so or has not done so effectively;
  - 2.11 waiver or other indulgence or the discharge or release of a Buyer or any other person from any obligation;
  - 2.12 guarantee and indemnity by any other person who has entered into this Guarantee and Indemnity not being, for any reason whatsoever, enforceable; or

2.13 other acts, omission, thing or matter whatsoever which, but for this provision, might in any way operate to release or otherwise exonerate or discharge the Guarantor from any of its obligations as surety.

3. This Guarantee and Indemnity:

3.1 extends to cover the Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and

3.2 is a continuing guarantee and indemnity and, despite Settlement, remains in full force and effect for as long as the Buyer has any liability or obligation to the Seller under the Contract and until all of those liabilities or obligations have been fully discharged.

4. The Guarantor represents to the Seller that before the Guarantor entered into this Guarantee and Indemnity the Guarantor has read this Guarantee and Indemnity, the Contract and any other associated documents and has been given the opportunity to take and has taken whatever legal and other advice the Guarantor considered necessary.

5. The Seller may assign its rights under this Guarantee and Indemnity without affecting or discharging the Guarantor's liability as surety in any way.

6. The Seller does not have to sue the Buyer or enforce any rights against any person before claiming under this Guarantee and Indemnity.

7. This Guarantee and Indemnity binds each Guarantor individually and all of them jointly.

8. This Guarantee and Indemnity is a separate, collateral instrument to the Contract.

9. If there is any ambiguity in this Guarantee and Indemnity, it is to be interpreted in favour of the Seller. Any void, voidable or illegal term of this Guarantee and Indemnity is to be read down or severed leaving the balance operable.

10. Any terms defined in the Contract have the same meaning when used in this Guarantee and Indemnity. The use of the word "including" (and any similar expression) is not used as a word of limitation.

**Guarantor's Signature – Signed as a Deed**

**WARNING:** If you sign as Guarantor then you are agreeing to be liable for the performance of the Buyer under the Contract.

**SIGNED SEALED AND DELIVERED** by )  
Guarantor 1 named in the Reference Schedule )  
in the presence of:

Witness

**[MUST WITNESS]**

**FULL SIGNATURE – GUARANTOR 1**

**SIGNED SEALED AND DELIVERED** by )  
Guarantor 2 named in the Reference Schedule )  
in the presence of:

**FULL SIGNATURE – GUARANTOR 2**

Witness

**[MUST WITNESS]**

**Note:**

1. All directors of a Buyer company must sign this Guarantee and Indemnity; and
2. The signing of this Guarantee and Indemnity must be witnessed. Witnesses must be 18 years or over and not another guarantor or party to the Contract.