

“2 Page Street”

2 Page Street, KUNDA PARK

CONTRACT OF SALE

Lot 1

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PART A

REFERENCE SCHEDULE

Contract Date:	23 November 2021
Seller: Address:	Professional Developments Pty Ltd ACN 647 268 335 trustee under Instrument 720586027 c/- Thompson McNichol, 5/32 Aerodrome Road, Maroochydore Qld 4558
Seller's Solicitors: Address:	Thompson McNichol Lawyers Suite 5, 32 Aerodrome Road, Maroochydore / PO Box 552, Maroochydore QLD 4558 Telephone: (07) 5443 1566 Facsimile: (07) 5443 7196 Email: mail@tml.com.au
Buyer: Address:	Turtles Super Property Pty Ltd ACN 654 724 857 as trustee for the Turtles Super Trust 59 Cranfield Drive, Buderim, QLD 4556 Telephone: 0411 111 077 Facsimile: Email: ak@blackhaus.com.au
Buyer's Solicitors: Address:	Miller Sockhill Lawyers Contact: Anthony Miller (amiller@millersockhilllawyers.com.au) PO Box 449, Cotton Tree QLD 4558 Telephone: 07 5444 4750 Facsimile: 07 5477 5222 Email: info@millersockhilllawyers.com.au
Guarantor: Address:	Andrew James Kerr and Stacey Ann Kerr 59 Cranfield Drive, Buderim Qld 4556
Agent: Address:	Define Property PO Box 761, MOOLOOLABA QLD 4557 Telephone: 07 5478 2477 Facsimile: 07 5478 2499 Email: info@defineproperty.com.au
Lot:	Proposed Lot 1 as shown on the Disclosure Plan, subject to any variations permitted by this contract.
Exclusive use areas:	Two (2) car space/s subject to clause 2.2
Purchase Price:	\$534,000.00 (exclusive of GST)
Deposit:	Initial: \$1,000.00 paid Balance: \$52,400.00 payable on satisfaction or waiver of Finance Total: \$53,400.00
Deposit Holder:	Thompson McNichol Lawyers Trust Account ANZ Bank - Maroochydore BSB 014 650 Account 3766 41877 <u>QUOTE REF: Lot 1 (surname)</u>
Finance Date:	30 days from Contract Date (Unless "Finance Date" is completed, this contract is not subject to finance and clause 5 does not apply)

PART B
SPECIAL CONDITIONS

1. Amended Terms of Contract

1.1 Part C Contract Terms are amended as follows:

(a) Risk

Clause 14.1 (Risk) is deleted and replaced with:

The Lot is at the Buyer's risk from the time either possession of the Lot is given to the Buyer or settlement takes place, whichever first occurs. If the Building or the Lot are destroyed or substantially damaged before risk passes to the Buyer, then the Seller may terminate this contract.

(b) Obligation to pass on

Clause 19.4 is amended by removing the words "or mortgage" and "or mortgagee".

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PART C

CONTRACT TERMS

ABOUT THE DEVELOPMENT

- A. The Development is a commercial/industrial development comprising 26 lots as approximately illustrated in the Plans and to be finished substantially in accordance with the Schedule of Finishes.
- B. The Survey Plan is the only plan to be registered in respect of the Development. Therefore, there will be only one body corporate for the Development to which the Community Management Statement will apply.
- C. After Registration of the Plan and establishment of the Scheme, the Seller may cause the Body Corporate to enter into Body Corporate Agreements, including a Body Corporate Manager Administration Agreement, substantially in accordance with the documents set out in the Disclosure Statement and any further statements issued under s214 of the Act.
- D. The Seller will determine, in its discretion, the other parties to the Body Corporate Agreements. The other party may be the Seller, a related entity of the Seller or a third party. The Seller may receive benefits for causing the Body Corporate to enter into some Body Corporate Agreements, which benefits the Seller is entitled to retain for its own use and benefit absolutely.

CONTRACT TERMS

1. Definitions

1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them;
- (2) unless the context otherwise requires, words and phrases used in the Act or the *Land Title Act 1994* have the same meaning that they have in those Acts; and
- (3) unless the context otherwise requires:

"Act" means the *Body Corporate and Community Management Act 1997*.

"Adjustment Date" means the day prior to the date:

- (a) the Survey Plan is lodged in the Freehold Land Register, or
- (b) possession of the Lot is given to the Buyer, whichever first occurs.

"Approval" means all forms of approval from the Local Authority or any Authority which relates to the Development, the Lot or this contract or which has any effect on the Seller's ability to complete this contract.

"ATO" means the Australian Taxation Office.

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

"Authority" means any government, semi-government, administrative, fiscal, judicial or quasi-

judicial body, department, commission, authority, tribunal, agency or entity.

"Balance Purchase Price" means the Purchase Price, adjusted under **clause 7**, less the Deposit (subject to clause 4.1(6)).

"Bank" means:

- (a) a corporation which carries on a "banking business" as defined by section 5 of the *Banking Act 1959* (Cth); or
- (b) a bank constituted under a law of a State.

"Bank Guarantee" means an unconditional and irrevocable bank guarantee that:

- (a) is in a form and from a Bank acceptable to the Seller;
- (b) is for an amount equal to the amount payable;
- (c) has no expiry date; and
- (d) is payable to the Deposit Holder on demand by the Seller.

"Body Corporate" means the body corporate for the Scheme (whether created or to be created on recording of the CMS for the Scheme).

"Body Corporate Agreements" means any proposed service contractor's agreements and possibly other agreements to be entered by the Body Corporate after the Scheme is established including the agreements contained in the Disclosure Statement and any further statements issued under s214 of the Act.

"Body Corporate Levies" means contributions payable under the Act in respect of the Lot, including any payments under an exclusive use by-law.

"Building" means the building/s proposed to be constructed on the Parent Land generally in accordance with the Plans.

"Business Day" means a week day other than:

- (a) Saturday or Sunday;
- (b) a public holiday in the Place for Settlement; and
- (c) a day in the period 27 to 31 December (inclusive).

"CGT Withholding Amount" means the amount determined under s14-200 of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a Variation Notice under s14-235 of the Withholding Law.

"CMS" means the community management statement proposed to be recorded with the Survey Plan, a preliminary and rough draft of which is contained in **Part 7** of the Disclosure Statement.

"Condition Precedent" means the conditions precedent referred to in **clause 3**.

"Contract Date" means the date of this contract as shown in the Reference Schedule. The contract is to be dated the day it is signed by the Seller.

"Default Interest Rate" means the standard contract default interest rate as published by the Queensland Law Society Inc. plus 2% per annum.

"the Development" means the Building and any other buildings or works which the Seller proposes to construct which adjoin, are related to or connected with the Building or the Scheme.

"Disclosure Plan" means the plan attached in **Part 2** of the Disclosure Statement.

"Disclosure Statement" means the statement provided to the Buyer with this contract which contains the Disclosure Statement under **s213** of the Act containing information required by that section together with other information (if any) of interest to the Buyer, and unless the context otherwise requires, includes any further statements given to the Buyer under **s214** of the Act.

"Electronic Signature" means an electronic method of signing that identifies the person and indicates their intention to sign the Contract.

"Encumbrance" means any mortgage, lease, easement or other interest, statutory or otherwise, in land and any caveat lodged to protect them, registered or unregistered.

"Essential Term" includes, in the case of a breach by:
(a) the Buyer: clauses 4.1, 8.1(1), 8.2(1), 10.1, 15.10 and 16.1; and
(b) the Seller: clauses 8.2(1), 8.4(1)(a),(b),(c),(f) and 10.1;
but nothing in this definition precludes a court from finding other terms to be essential.

"EUP" means the exclusive use plan attached to the CMS;

"Financial Institution" means a Bank, building society or credit union.

"Freehold Land Register" means the register of freehold land kept by the Registrar of Titles under the *Land Title Act 1994*.

"GST" means the goods and services tax under the *GST Act*.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

"Local Authority" means Sunshine Coast Regional Council.

"Lot" means the Lot described in the Reference Schedule.

"Object" means to object generally, and includes to claim compensation, claim a price reduction, make any claim (including for an injunction or damages), withhold any part of the balance purchase price, withhold consent, delay settlement, refuse to perform

or settle, terminate or purport to terminate or make any other objection.

"Outgoings" means:

- (a) rates or charges by any competent authority including without limitation council rates, water rates, water consumption charges, waste disposal charges, fire service levies and including any interest, fines or penalties ("Rates");
- (b) Body Corporate Levies;
- (c) insurance costs for the Scheme; and
- (d) land tax.

"Parent Land" means the land originally described as Lot 3 on SP171065 Title Reference 50577210.

"Personal Information" has the meaning given to that expression in the *Privacy Act 1988 (as amended)*.

"Place for Settlement" means Maroochydore.

"Plans" means the plans and documents contained or referred to in **Part 2** and **Part 3** of the Disclosure Statement, subject to any variations permitted by this contract.

"Registration of the Plan" means registration of the Survey Plan and CMS (subject to any variations permitted by this contract) in the Freehold Land Register to create a separate title for the Lot and establish the Scheme.

"Schedule of Finishes" means the Preliminary Schedule of Finishes contained in **Part 4** of the Disclosure Statement.

"the Scheme" means the proposed 2 Page Street Community Title Scheme which will come into existence when the Survey Plan and CMS, as amended in accordance with this contract, is registered

"Seller's Consultant" means any of the Seller's project manager, architect or draftsman or builder (as nominated by the Seller).

"Settlement Date" means the date ascertained under **clause 8.2** as varied under any other clause or by written agreement.

"Sunset Date" means the date which is 3½ years from the Contract Date.

"Survey Plan" means the survey plan to be registered in the Freehold Land Register to create a separate title for the Lot, to be generally in accordance with the Disclosure Plan.

"Title Encumbrances" means the easements and other encumbrances (if any) shown on the Disclosure Plan.

"Transfer Documents" means:

- (a) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and

- (b) any other document to be signed by the Seller necessary for stamping or registering the transfer.

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

2. Agreement to Buy and Sell

2.1 Lot

The Buyer agrees to buy and the Seller agrees to sell the Lot on the terms of this contract.

2.2 Exclusive use areas

- (1) The parties agree that, subject to the provisions of this clause 2.2, the Lot is to have allocated to it by way of a grant of exclusive use or otherwise the exclusive use areas (if any) described in the Reference Schedule.
- (2) The Seller will not be in a position to finalise car space exclusive use allocations until closer to or after the Settlement Date. The Buyer accepts that the location, shape, size and dimensions of the car spaces are estimates only and that the Seller may substitute such areas with alternative areas of comparable shape, size and dimensions but which may be in different locations within the Scheme.
- (3) The Buyer acknowledges and agrees that:
 - (a) The Seller has the sole right, in its absolute discretion, as to which car spaces and other areas are allocated to each lot by way of grants of exclusive use or otherwise;
 - (b) The Seller reserves the right to grant any rights of exclusive use, including car spaces and other areas, to other buyers of lots in the Scheme on such conditions as the Seller sees fit. The Seller is entitled to any moneys paid for such rights;
 - (c) The allocation of the exclusive use areas for car parking may be subject to Local Authority restrictions;
 - (d) The recording of allocation of any exclusive use areas for car parking in favour of the Lot under this clause will not occur prior to the Settlement Date;

and the Buyer shall not Object for any of the above matters.

- (4) The Seller will, unless the Seller is prevented by the Local Authority at any time after the date of this Contract, cause the Body Corporate to record a New Community Management Statement recording the allocation of any car spaces required to be allocated to the Lot under this clause 2.2 as soon as reasonably practicable after the Settlement Date and in any event within 8 months of the Settlement Date occurring.
- (5) Any car space or other areas not allocated to owners of lots by the Seller by the Settlement Date (other than the areas to be allocated to the Lot under this Contract) may be sold, transferred, re-allocated, subdivided, made part of any lot or the common property, made available for public parking or put to any other use or cause in the Seller's absolute discretion. The Seller is entitled to any moneys paid for such rights.

3. Conditions Precedent and Delays

3.1 Conditions Precedent

This contract is conditional on the following Conditions Precedent ("Conditions Precedent") being satisfied, and settlement taking place, on or before the Sunset Date:

- (1) Registration of the Plan; and
- (2) Issue of a Certificate of Occupancy under the *Building Act 1975* for the Building.

The Seller may not waive compliance with any of the Conditions Precedent.

3.2 Seller's Obligations

The Seller will use its reasonable endeavours to satisfy the Conditions Precedent and settle the Contract on or before the Sunset Date.

3.3 Sunset Date

If the Seller has not satisfied the Conditions Precedent and settled the Contract on or before the Sunset Date, other than because of the Buyer's default, then the Buyer may terminate this contract by notice in writing to the Seller whereupon the Deposit and any interest shall be refunded to the Buyer.

3.4 Outstanding Consents

If the Seller's ability to lawfully perform the terms of this contract and complete this sale requires any consent of any person or Authority, then this contract is conditional upon that consent being obtained and the Seller must take all reasonable steps to obtain that consent. The Buyer must assist the Seller where necessary. If the consent is not granted by the Settlement Date, then the Seller may terminate this contract in which case the deposit and any interest thereon shall be refunded to the Buyer.

4. Deposit

4.1 Payment of Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default of an essential term of this contract if it:
 - (a) does not pay the Deposit when required;
 - (b) pays the Deposit by post-dated cheque; or
 - (c) pays the Deposit by cheque which is dishonoured on presentation;and in which case, the Seller may, in addition to any other remedy, terminate this contract, forfeit any part of the Deposit which has been paid (including drawing down on any Bank Guarantee provided by the Buyer) and/or recover any unpaid amount of the Deposit as a liquidated debt.
- (3) The Buyer may, with the Seller's consent, pay the Deposit or any part of it by giving the Seller a Bank Guarantee by the time upon which the Deposit or such part of it is to be paid.
- (4) If the Bank Guarantee referred to in the above clause is called upon by the Seller due to the Buyer's default under this Contract, the amount paid under it will form the Deposit it represents.
- (5) If, before settlement of this contract, the Seller determines on reasonable grounds that a Bank Guarantee is no longer acceptable to the Seller, then the Seller may require the Buyer to pay the Deposit to the Deposit Holder in lieu of or in exchange for the Bank Guarantee by giving seven (7) days notice in

writing, in default of which, the Seller may call upon the Bank Guarantee.

- (6) The Bank Guarantee will be returned to the Buyer at Settlement. In this case no deduction will be made to the Purchase Price at Settlement for the amount of the Bank Guarantee.
- (7) Under no circumstances is the Deposit to exceed twenty per cent (20%) of the Purchase Price before settlement of the contract. If the Seller allows a discount or rebate or agrees to reduce the Purchase Price for any reason, or any circumstance arises which could lead to the Deposit exceeding twenty per cent (20%) of the Purchase Price before settlement, then such discount, rebate, reduction or circumstance will be conditional upon settlement. If for any reason that condition cannot operate, then the Deposit Holder will as soon as reasonably practicable refund to the Buyer any monies that would otherwise result in the twenty per cent (20%) being exceeded, provided that if the Buyer provided a Bank Guarantee in payment of the Deposit pursuant to clause 4.1(3), the Buyer must as soon as reasonably practicable procure a new Bank Guarantee for an amount equal to twenty per cent (20%) of the reduced Purchase Price to be provided to the Deposit Holder in exchange for the original Bank Guarantee in the higher amount.

4.2 Investment of Deposit

- (1) The Deposit paid will be invested by the Deposit Holder unless:
 - (a) settlement is, in the opinion of the Seller, likely to be less than 6 months after the Contract Date;
 - (b) the Deposit paid is less than \$50,000.00; or
 - (c) the Deposit Holder is of the opinion that the interest earned on the Deposit will be less than the fee payable under clause 4.2(6), or if the Seller otherwise directs it be invested.
- (2) If the Deposit paid is to be invested, then the Deposit Holder will invest it in an interest bearing account, in the Deposit Holder's name, with a bank specified by the Seller, and the parties hereby authorise the Deposit Holder to make the investment.
- (3) The Buyer must give its tax file number to the Deposit Holder for the purposes of making the investment within three (3) Business Days of being requested to do so by the Seller or Deposit Holder.
- (4) Any interest on the Deposit will be held by the Deposit Holder until a party becomes entitled to it.
- (5) The person entitled to the interest on the deposit must pay the costs of preparing any necessary tax return and any income tax assessed on such interest and the Deposit Holder is authorised to deduct such costs and tax from the interest and the Deposit.
- (6) The parties agree to pay to the Deposit Holder a fee of \$150.00 plus GST or the amount of interest earned on investment of the deposit, whichever is the lesser amount, as an administration fee for investing the Deposit in the same proportion as they are entitled to share the interest and authorise such sum to be deducted from the interest on the Deposit.
- (7) The Deposit is invested at the risk of the party who is ultimately entitled to it. The Deposit Holder will not be liable for any losses incurred as a consequence of the investment of the Deposit in accordance with this clause.

4.3 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:

- (a) if this contract settles, the Seller;
 - (b) if this contract is terminated without default by the Buyer, the Buyer; and
 - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The party entitled to receive any interest on the deposit is:
 - (a) if this contract settles, the Buyer and Seller share equally;
 - (b) if this contract is terminated without default by the Buyer, the Buyer; and
 - (c) if this contract is terminated owing to the Buyer's default, the Seller.
 - (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.

5. Finance

5.1 Finance Condition

This contract is conditional on the Buyer obtaining approval of a loan for an amount sufficient to complete the purchase of the Lot from a Financial Institution by the Finance Date on terms satisfactory to the Buyer, acting reasonably. The Buyer must promptly apply for and take all reasonable steps to obtain such approval.

5.2 Notice by Buyer

The Buyer must give notice to the Seller by 5.00pm on the Finance Date that:

- (1) approval has not been obtained by the Finance Date and the contract is terminated; or
- (2) the finance condition has been either satisfied or waived by the Buyer.

5.3 Seller May Terminate

The Seller may terminate this contract by notice to the Buyer if notice is not given under **clause 5.2** by 5.00pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice. The Buyer will, if requested by the Seller, provide details of compliance with clause 5.1 or written proof of rejection of the Buyer's application for finance approval.

5.4 Buyer's Continuing Rights

The Seller's right under **clause 5.3** is subject to the Buyer's continuing right to terminate this contract under **clause 5.2(1)** or waive the benefit of this **clause 5** by giving written notice to the Seller of the waiver.

6. Construction of Building

6.1 Construction of Building

The Seller must procure the construction of the Building substantially in accordance with the Plans and Schedule of Finishes in a good and workmanlike manner subject to the variations allowed by this **clause 6**.

6.2 Completion of Lot

Subject to the variations the Seller may make under this clause, the Seller must ensure that the Lot when completed is substantially the same as the Lot as shown on the Plans. The Buyer acknowledges that the Disclosure Plan is for identification purposes only and that it is a preliminary draft only.

6.3 Variations the Seller may make

While this **clause 6.3** allows the Seller to make variations, the next clause may give the Buyer certain rights if the Buyer is materially prejudiced by a variation. The Seller may, without the Buyer's consent or approval:

- (1) Change the number of proposed lots in the Scheme;
- (2) Change the configuration of proposed lots in the Scheme including the Lot;
- (3) Change the design of the Building, the common property and/or the Lot;
- (4) Change the items (including make, model, type and quality) in the Schedule of Finishes;
- (5) Change the name of the Scheme;
- (6) Change the lot or unit number allocated to the Lot or any other lot in the Scheme;
- (7) Increase or reduce the number of carparks or storage areas available for use by the public or by owners or occupiers of lots in the Development and alter the design, layout, size and positioning of such carparks or storage areas including the conversion of all or part of various carparks or additional carparks into storage areas or other uses and vice versa;
- (8) Change the permitted use of any other lots in the Scheme;
- (9) Amalgamate or subdivide any one or more of the proposed lots in the Scheme (excluding the Lot) into one or more lots and redesign the new lots;
- (10) Change the by-laws including changes to areas that are subject to an exclusive use by-law;
- (11) Substitute any of the materials, fittings, fixtures or chattels described in the Plans;
- (12) Change the Body Corporate Manager Administration Agreement or any other Body Corporate Agreements;
- (13) Make arrangements for the Body Corporate to enter into a Body Corporate Agreement not disclosed in the Disclosure Statement;
- (14) Change the Body Corporate Levies and budgets shown in the Disclosure Statement;
- (15) Change the lot entitlements of various lots in the Building including the Lot;
- (16) Make any change referred to or disclosed in this contract or the Disclosure Statement;
- (17) Make any other variation to the Lot, the Building, the Scheme and anything related or incidental thereto which the Seller determines in its discretion to be desirable for the Scheme because of the practical exigencies of construction, the dictates of good building practice, availability of materials and/or the efficient, practical and economical operation or use of the Development; and
- (18) Make any other changes which the Seller's Consultant, Seller's Solicitors or the Seller's engineer, project manager, builder, surveyor or any other consultant determine is required because of a change in the law, requirements of the Registrar of Titles, the requirements and directions of the Local Authority or any other Authority, design development, practicalities of construction, dictates of good building practice and/or the availability of materials.

6.4 Buyer's Rights on Variations

The Buyer may terminate this contract prior to settlement if the Buyer is materially prejudiced by a variation under **clause 6.3** which the Seller is required to include in a further statement under **s214** of The Act ("Further Statement"), but only if the Buyer gives the Seller written notice cancelling this contract within 21 days after service of the Further Statement. If the Buyer does not give the

cancellation notice to the Seller in accordance with this clause, then the Buyer will be deemed to have unequivocally accepted the variation. If the Buyer terminates this contract under this clause, the Seller will refund the deposit to the Buyer forthwith and subject only to the rights the Buyer may have under the Act, the Buyer shall have no further remedies against the Seller as a result of such termination.

6.5 Material Prejudice

The Buyer agrees that it will not be materially prejudiced by:

- (1) Either an increase or a reduction in the area of the Lot or a part of it unless the total area of the Lot is increased or reduced by more than 5% of the original area (this does not mean that an increase or reduction of more than 5% is a material prejudice);
- (2) A change in lot entitlements unless the proportion of the lot entitlement of the Lot to the aggregate lot entitlement has increased or reduced by more than 5% (this does not mean that an increase or reduction of more than 5% is a material prejudice);
- (3) A change in budgets or Body Corporate Levies for the first year of the Scheme unless the total Body Corporate Levies payable will increase by more than 10% (this does not mean that an increase of more than 10% is a material prejudice); or
- (4) A change in the Schedule of Finishes unless the new item is of a substantially lower quality than the item it replaces.

This is not an exhaustive list of the things that are not materially prejudicial to the Buyer.

6.6 Buyer's Rights if not Materially Prejudiced

Subject to the Buyer's rights to terminate this contract for variations under **clause 6.4**, the Buyer has no right to terminate this contract, claim compensation, delay settlement or withhold any part of the purchase price as a result of variations made under **clause 6.3**.

6.7 Variations requested by Buyer

The Seller is not required to vary the Lot (including its finishes) if requested by the Buyer. If the Seller agrees to make any variations to the Lot (including its finishes) in response to a written request by the Buyer, the Buyer must:

- (1) if requested, sign a Contract Variation or Deed of Variation prepared by the Seller's solicitor; and
- (2) pay to the Seller on Settlement in addition to the Purchase Price:
 - (a) the costs of the variations to the Lot (including any GST) as agreed in writing or as otherwise evidenced by an invoice from the Seller's nominated contractor, and
 - (b) The Seller's costs of \$350.00 plus GST of preparing and entering into a Contract Variation or Deed of Variation if requested.

7. Adjustments

7.1 Date of Adjustment

The Seller is liable for Outgoings up to and including the Adjustment Date and the Buyer is liable for Outgoings after the Adjustment Date and an adjustment will be made on settlement.

7.2 Basis of Adjustment

Outgoings for periods including the Adjustment Date must be adjusted:

- (1) for those paid, on the amount paid;
- (2) for those assessed but unpaid, on the amount payable (excluding any discount), and
- (3) where they are not separately assessed for the Lot at the Adjustment Date and the relevant Authority will not apportion the Outgoing between the Buyer and the Seller, then on the amount and in the manner determined by the Seller's solicitor acting reasonably (which may be based on lot entitlements, land area or any other reasonable basis).

7.3 Land Tax

Land tax will be adjusted on a proportion of the total assessment that the Office of State Revenue has or would issue for the land tax year current at the Settlement Date on the basis that the Seller is a corporation and the Parent Land is the only land it owns in Queensland.

7.4 Body Corporate Levies

If requested by the Seller, the Buyer will, on settlement and as a condition of the Seller complying with its obligations under **clause 8.4**, provide the Seller with a Bank Cheque payable to the Body Corporate for the Body Corporate Levies payable by the Buyer under this **clause 7**. The Seller will forward such cheque to the Body Corporate following settlement.

7.5 Outgoings Not Paid

If Outgoings payable by the Seller for periods including the Adjustment Date are not assessed or assessed but unpaid as at the Settlement Date, then:

- (1) such Outgoings must be adjusted as if paid by the Seller,
- (2) the Seller undertakes to make payment of those Outgoings and the Buyer accepts this undertaking,
- (3) the Buyer must not require payment of such Outgoings by the Seller prior to settlement or require any retention from the Balance Purchase Price, and
- (4) the Seller indemnifies the Buyer with respect to any failure by the Seller to pay such Outgoings after settlement in accordance with this clause.

7.6 Land Tax Clearance

Despite the Office of State Revenue specifying in writing to the Buyer that it would be prudent to hold a sum of money until a final clearance issues for the relevant year in respect of land tax, the Buyer must not require payment of such land tax by the Seller prior to settlement or require any retention from the Balance Purchase Price.

7.7 Solicitor's Determination

The Seller's Solicitors will be taken to have acted reasonably for the purposes of this **clause 7** in the absence of gross and manifest error. The parties agree that it would be reasonable to apportion Rates based on contribution schedule lot entitlements and land tax and insurance based on interest schedule lot entitlements. No adjustment is required where the relevant Authority will apportion the Outgoing between the Buyer and Seller. The Buyer may not Object to any determination of adjustments prior to settlement, however may reserve its rights to require a readjustment following settlement if notice to that effect is given to the Seller's Solicitor prior to settlement. The Buyer must pay the Seller's reasonable legal costs of any readjustment unless there has been a gross and manifest error

7.8 Readjustment

If an Outgoing is adjusted on an amount that proves to be different from the actual amount of the Outgoing for the

relevant period then either party may require a readjustment. The Buyer must pay the Seller's reasonable legal costs of any readjustment.

8. Settlement

8.1 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in this contract:
 - (a) includes a cheque drawn by a building society or credit union on itself;
 - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in **clause 8.1(2)(b)** on the Settlement Date.
- (3) The cost of Bank cheques payable at settlement are the responsibility of the Buyer.

8.2 Time and Date

- (1) The Settlement Date is the later of the following dates:
 - (a) 30 days after the Contract Date,
 - (b) 22 days after the Seller gives the Buyer a Further Statement under s214 of the Act (if one is given), and
 - (c) 14 days after the day the Seller or the Seller's Solicitors notify the Buyer that Registration of the Plan has occurred,
 provided that if by the Settlement Date, a Certificate of Occupancy under the *Building Act 1975* has not yet issued for the Building, then the Settlement Date will be postponed to the day which is two (2) Business Days after the day the Seller or the Seller's Solicitors notify the Buyer that a Certificate of Occupancy for the Building has issued. To remove any doubt, settlement must not take place earlier than 14 days after the Seller or the Seller's Solicitors notify the Buyer that the Scheme has been established or changed.
- (2) Settlement must occur between 9.00am and 4.00pm on the Settlement Date.
- (3) If the parties do not agree on a time for settlement by 4.00pm on the Business Day before settlement, settlement shall be effected at such time (not before 11.00am) as nominated by the Seller by giving at least 2 hours prior notice.
- (4) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the Seller's Solicitors office nearest to the Place for Settlement.
- (5) Should the Buyer seek an extension of the Settlement Date and the Seller grants the extension, unless agreed otherwise the parties agree that:
 - (a) the Buyer must pay (at settlement) default interest at the Default Interest Rate from the original Settlement Date to the date settlement actually occurs; and
 - (b) the Buyer must pay an administration fee (at settlement) of \$200.00 plus GST to Seller's solicitors.

Notwithstanding this clause, the Seller reserves its right to consider extensions at its discretion.

8.3 Transfer Documents

- (1) Unless the Seller's Solicitors advise the Buyer that the Seller's Solicitors will prepare the Transfer Documents, the Transfer Documents must be prepared by the Buyer's Solicitors and delivered to the Seller for signing a reasonable time before the Settlement Date.
- (2) If requested, the Seller will lend the signed Form 1 Transfer to the Buyer's solicitors so that it can be stamped on their undertaking to use it only for that purpose pending settlement.
- (3) If the Buyer pays the duty and the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

8.4 Seller's Obligations on Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
 - (a) the Transfer Documents;
 - (b) a release of any mortgage over the Lot (stamped if necessary and in registrable form)
 - (c) a release of any other registered Encumbrance over the Lot required by this contract to be released;
 - (d) vacant possession of the Lot;
 - (e) the keys, codes or devices to enable the Buyer to access the Lot; and
 - (f) if the Lot is purchased subject to any Easement not yet registered, the signed Easement in registrable form and registration fees.
- (2) If the Lot is purchased subject to any Easement that is not registered by the Settlement Date, the Buyer must accept on settlement of this contract the documents referred to in **clause 8.4(1)(f)** and will promptly do everything necessary to register the Easement and forward a copy of the Registration Confirmation Statement to the Seller as soon as possible. The Buyer will not Object if any Easement is not registered at settlement.

8.5 Extension of settlement

Despite any other provision in this Contract, if at the Settlement Date the Seller is restricted, prevented or prohibited by any means, thing or event whatsoever from completing this Contract or from giving title and possession in accordance with the terms of this Contract (including, without limitation, by reason of any caveat, statutory charge, encumbrance or any injunction) then the Seller may, at any time up to and including the Settlement Date by notice in writing to the Buyer terminate this Contract or extend the Settlement Date by such periods of time as the Seller may require to settle this Contract and give title and possession to the Buyer, the total of which not being more than ninety (90) days from the original Settlement Date as defined in this Contract. If the Seller gives notice of an extension then the Seller shall be entitled to call upon the Buyer to complete on seven (7) days written notice at any time during the extended period. The Seller will use all reasonable endeavours to remove any restriction or impediment to settlement. However, if the Seller is unable to settle this Contract and give title and possession within any extended period of time, the Seller may terminate this Contract by notice in writing to the Buyer, the Deposit will be refunded in full to the Buyer and the Buyer shall not be entitled to make any claim in that regard.

8.6 Collection of Keys etc

Despite **clause 8.4**, it will be sufficient if the Seller makes the keys, codes or devices available for collection by the Buyer from the Agent or such other person as the Seller nominates.

9. Defects

9.1 Seller's Obligations

The Seller must, within a reasonable time, rectify any defects in workmanship and materials in the Lot which are notified by the Buyer to the Seller within three (3) months of the Settlement Date. However the Seller is not required to rectify:

- (1) defects which are not notified by the Buyer to the Seller within three (3) months of the Settlement Date;
- (2) defects in the equipment or appliances for which there is a manufacturer's or supplier's warranty;
- (3) scratches, chips, dents or marks which are not notified by the Buyer to the Seller in writing on or before the date the Buyer takes possession of the Lot;
- (4) concrete paths, slabs, garage floors, driveways, patios, terraces, tiled areas or other exposed concrete surfaces that develop cracks or other damage due to temperature changes or normal settlement; and
- (5) anything which would amount to normal maintenance, fair wear and tear, minor shrinkage or minor settlement cracks.

If the Seller fails to rectify defects under this clause, the Buyer may claim damages limited to the reasonable cost of rectification only.

9.2 Manufacturer's Warranties

On settlement, the benefit of any manufacturer's warranties held by the Seller for chattels or fixtures in the Lot passes to the Buyer. Any further things necessary to complete the transfer of warranties are the Buyer's responsibility. The Seller will cooperate where necessary.

9.3 Buyer's Obligation to Settle

The Buyer must not refuse to settle this Contract, withhold any part of the balance purchase price or delay settlement because of any defect in the Building, the Lot, or any equipment or appliances in the Building or the Lot whether due to defective materials, workmanship or any other cause.

9.4 Dispute Resolution

Any dispute relating to defects under this clause must be referred to the Seller's Consultant to decide as an expert and whose decision will be final and binding. If the Seller's Consultant refuses or is unable to decide such dispute, then the dispute will be submitted to an expert in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Expert Determination Rules.

10. Time

10.1 Time of Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

10.2 Extensions

If a date in this contract is extended or varied at any time by agreement, then in respect of such extended or varied date, time shall remain of the essence whether expressly

stated or not. No extension of time or other indulgence granted by the Seller will be valid unless in writing signed by the Seller or the Seller's Solicitors.

10.3 Time Zone

A reference to time in this contract is a reference to time at the Place for Settlement.

11. Title

11.1 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

11.2 Title to Lot

The Seller will pass and the Buyer will accept freehold title to the Lot under the *Land Title Act 1994* subject to:

- (1) the Act;
- (2) the CMS;
- (3) the Title Encumbrances (if any);
- (4) any transfer, lease, easement or other right over the Parent Land (whether existing or not) to the Local Authority, Telstra or any other Authority;
- (5) any notification, easement or restriction (other than a mortgage) reasonably required to satisfy an Authority as a condition to the grant of any Approval or the registration of any plan or document;
- (6) easements benefiting or burdening the Lot or the Parent Land under the Act including those for:
 - (a) the passage or provision of services;
 - (b) lateral and/or subjacent support;
 - (c) projections from the Lot over adjoining properties or over the Lot from adjoining properties;
- (7) the Building Management Statement (BMS) substantially in accordance with the BMS referred to in the Disclosure Statement, if any;
- (8) any variations allowable under **clause 6**; and
- (9) anything described or referred to in this contract or the Disclosure Statement,

and the Buyer may not refuse to settle, delay settlement, claim compensation or withhold any part of the Purchase Price because of any of the above matters.

12. Acknowledgments and Warranties

12.1 Buyers Acknowledgments

The Buyer acknowledges that:

- (1) Before the Buyer signed this contract the Buyer received a Disclosure to Prospective Buyer Form 8 under the *Property Occupations Act 2014 (Qld)*.
- (2) In entering into this contract, the Buyer has not relied on any statement or representation which the Seller, the Seller's agent or any other consultant appointed by the Seller made to the Buyer other than as set out in this contract or the Disclosure Statement and that the Buyer has signed this contract after making his/her/its own investigations and enquiries.
- (3) All information that the Seller or the Seller's agent gave the Buyer in brochures, models, financial projections and the like for the proposed Development is generic and indicative only and was not relied on by the Buyer.
- (4) The Buyer has not relied on any artist's impression, model, display unit, plans, sketches, specifications, or sales aid of any description, other than as contained in this contract.

- (5) 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.
- (6) The Buyer has had the opportunity to seek independent legal advice before the Buyer signed this contract and that the Buyer was well aware that it would be prudent to obtain such advice prior to signing this contract.
- (7) The Buyer shall have no rights to Object to any easements, rights of way, encroachments, licences, leases, grants of exclusive use or other rights, Encumbrances or easements which affect only the common property of the Scheme.
- (8) The Buyer shall have no rights to Object if the Seller causes the Body Corporate to consent to the owner or occupier of another lot in the Scheme keeping a pet in their lot.
- (9) Some Body Corporate Agreements may not be entered into until after settlement.
- (10) The Local Authority may impose conditions on the Seller in respect of the public use of any parts of the common property and the Buyer will accept the Lot subject to any such conditions.
- (11) A provision of this contract will not be construed to the disadvantage of the Seller merely because the Seller was responsible for its preparation.
- (12) The Seller may lease any commercial lots in the Development and permit the same to be used for such usages as the Seller in its absolute discretion sees fit and may change or vary the permitted uses from time to time in the Seller's discretion.
- (13) The Seller may make the changes and variations stated in **clause 6**, and, where applicable, the Buyer will have no right to Object because of any of the above matters.

12.2 Section 73 Property Law Act

In the event that this contract is deemed an instalment contract for whatever reason, the Buyer hereby consents to the Seller selling or mortgaging (including making a further advance on an existing mortgage) or giving other securities over the Parent Land in accordance with the provisions of this contract.

12.3 Marketing of Development

The Buyer acknowledges that the Lot forms part of the Development to be developed by the Seller into lots for sale and/or lease and that the Seller may do all things following settlement which are reasonably necessary for the purposes of selling and leasing lots in the Development, including the use of the common property for signage, display lots and a sales office until all lots in the Development have been sold.

12.4 Seller's Warranties

- (1) The Seller warrants that at the Settlement Date:
 - (a) it will be the registered owner of an estate in fee simple in the Lot;
 - (b) it will be capable of completing this contract;
 - (c) there will be no unsatisfied judgment, order or writ affecting the Lot; and
 - (d) there will be no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Lot.
- (2) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer

under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:

- (a) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Lot; and
 - (b) the Seller is not aware of any facts or circumstances that may lead to the Lot being classified as contaminated land within the meaning of EPA.
- (3) If the Seller breaches a warranty in **clause 12.4(1)** or **(2)**, the Buyer may, if the Buyer's interests are materially prejudiced, terminate this contract by notice in writing to the Seller given within 14 days of the day the Buyer becomes aware of the breach but in any event on or before the Settlement Date, in which case the Deposit will be refunded to the Buyer. This is the Buyer's only remedy for such a breach. If the Buyer settles then the Buyer is deemed to release the Seller from any liability for such a breach.
- (4) The Buyer will have no right to Object if in connection with the Lot, Parent Land, Development and/or Seller, a person or entity holding a mortgage over the Parent Land or the Lot from the Seller becomes a mortgagee in possession or appoints an administrator, receiver, receiver and manager, agent, controller or similar functionary.

12.5 Sale of Management and other rights

The Buyer agrees that the Seller may cause the Body Corporate to:

- (1) engage any person as Body Corporate Manager or service contractor or to provide any services (including utilities, meter reading, billing services, broadband, pay TV or other services) to the Body Corporate or to owners and occupiers in the Scheme, or
- (2) authorise a person as letting agent for the Scheme, or to enter into any arrangement with such persons and any moneys paid to the Seller or any other person for causing the above shall remain the recipient's absolute property.

13. Termination by Seller

13.1 Approvals

If an Approval is refused, not given, varied, revoked or cancelled such that the Seller is, or in the Seller's reasonable opinion will be, prevented from satisfying a Condition Precedent, or if an Approval is given or varied with conditions that the Seller is unable or unwilling on reasonable grounds to comply with, then the Seller may terminate this Contract.

13.2 Pre-Sales and Finance

If the Seller is unable to obtain sufficient pre-sales of lots in the Development to the Seller's satisfaction or if the Seller is unable to obtain construction finance for the Development on terms satisfactory to the Seller or if the Seller otherwise determines on reasonable grounds that the Development is not or will not be financially viable to the Seller's satisfaction, the Seller may terminate this Contract. The Seller must act honestly.

13.3 Damage or destruction

If the Building or the Lot is destroyed or substantially damaged prior to settlement then the Seller may terminate this contract.

13.4 Sunset Date

In the event that Registration of the Plan has not been effected on or before the Sunset Date, or if the Seller, acting reasonably, forms the view that Registration of the Plan will not occur by the Sunset Date, then, provided the Seller has complied with **clause 3.2**, the Seller may terminate this Contract.

13.5 Consequences of Seller's Termination

If this contract is terminated under this **clause 13**, the Buyer shall be entitled to a refund of the Deposit together with any interest but this will be the Buyer's only remedy and the Buyer will not have any other claim against the Seller for such termination.

14. Risk and Access

14.1 Risk

The Lot is at the Buyer's risk from 5.00pm on either the date possession of the Lot is given to the Buyer or 5.00pm on the Business Day after the Seller or the Seller's Solicitors gives the Buyer notice that Registration of the Plan has occurred, whichever first occurs. If the Building or the Lot are destroyed or substantially damaged before risk passes to the Buyer, then the Seller may terminate this contract.

14.2 Access

After the date the Seller has given the Buyer notice that Registration of the Plan has occurred, or such earlier date as the Seller may, in its complete discretion, notify the Buyer, the Buyer or the Buyer's consultant/s (as the case requires) may, after reasonable notice given to the Seller, enter the Lot before the Settlement Date by prior appointment made with the Seller or the Agent:

- (1) once to inspect the Lot; and
 - (2) once to value the Lot,
- and, if required by the Seller, the Buyer or Buyer's consultant/s (as the case requires) must be accompanied by a representative of the Seller.

15. Parties' Default

15.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract, or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

15.2 If Seller Affirms

If the Seller affirms this contract, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

15.3 If Buyer Affirms

If the Buyer affirms this contract, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

15.4 If Seller Terminates

If the Seller terminates this contract it may do all or any of the following:

- (1) resume possession of the Lot (if necessary);

- (2) keep the Deposit and interest earned on its investment;
- (3) if the Deposit was paid by Bank Guarantee (either partially or in full), draw down on the Bank Guarantee and retain the funds;
- (4) sue the Buyer for damages;
- (5) resell the Lot.

15.5 If Buyer Terminates

If the Buyer terminates this contract it may do all or any of the following:

- (1) recover the deposit and any interest earned;
- (2) sue the Seller for damages;

15.6 Resale

- (1) On a resale, the Seller may recover from the Buyer as liquidated damages:
 - (a) any deficiency in price on a resale;
 - (b) its expenses connected with this contract, any repossession action, any failed attempt to resell, and the resale (including legal costs on an indemnity basis);
 - (c) all Outgoings that would have been payable by the Buyer under this contract from the Adjustment Date until settlement of the resale; and
 - (d) any other costs, loss or damage suffered or incurred by the Seller resulting from the Buyer's breach (and the Buyer hereby indemnifies the Seller against the same);

provided the resale settles within 2 years of termination of this contract.

- (2) Any profit on a resale belongs to the Seller.
- (3) On a resale, the Seller may sell on such reasonable terms as it thinks fit and may bid at any auction.

15.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the Buyer will indemnify the Seller against any loss which the Seller sustains as a result of the Buyer's default.

15.8 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made and if settlement occurs, such interest will be added to the Balance Purchase Price payable at settlement.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment at the Default Interest Rate on the total judgment debt.

15.9 Administrative Costs

The Buyer must pay to the Seller on demand the Seller's administrative costs in connection with collecting any overdue payment due by the Buyer under this contract.

15.10 Bankruptcy etc

The Buyer will be in default if and the Seller will be entitled to the remedies set out in this clause if:

- (1) the Buyer goes bankrupt or, being a corporation, goes into liquidation;

- (2) the Buyer being a natural person dies or is found to be incapable of managing his own affairs by reason of unsoundness of mind;
- (3) the Buyer assigns its property for the benefit of creditors; or
- (4) the Buyer become an externally administered body corporate within the meaning of the *Corporations Act 2001*.

15.11 Additional Rights

The provisions of this clause 15 are in addition to and not in limitation of the rights of the Seller and the Buyer at law, in equity or under the remaining provisions of this contract.

16. Guarantee and Indemnity

16.1 Consideration

The Guarantor:

- (1) has requested the Seller to enter into this Contract with the Buyer;
- (2) enters into this Guarantee and Indemnity in consideration for the Seller:
 - (a) entering into this Contract at the request of the Guarantor, and
 - (b) hereby agreeing to pay the Guarantor \$1.00 within 10 Business Days after written demand by the Guarantor to the Seller; and
- (3) acknowledges the receipt of valuable consideration from the Seller for the Guarantor incurring obligations under this Guarantee and Indemnity.

16.2 Guarantee

The Guarantor unconditionally and irrevocably guarantees the performance by the Buyer of all of its obligations under this contract, including the obligation to pay money. This guarantee and security is a continuing guarantee and is not affected by any payment.

16.3 Indemnity

As a separate covenant, the Guarantor indemnifies the Seller against any loss or damage (including costs, charges and expenses) it may suffer as a result of the Buyer failing to fulfil its obligations under this contract, including the obligation to pay money.

16.4 Guarantee not Affected

The Guarantor's obligations and the rights of the Seller under this clause 16 are not affected by anything that might otherwise affect them at law or in equity. This includes, without limitation:

- (1) The granting of time or indulgence;
- (2) Compounding, compromising or releasing;
- (3) Acquiescence, delay, acts, omissions or mistakes;
- (4) Variations or novations of a right;
- (5) Changes to this contract;
- (6) Settlement of this contract;
- (7) The invalidity or unenforceability of any obligation or liability;
- (8) An assignment of this contract by the Buyer;
- (9) The termination of this contract;
- (10) The non-execution of this contract by one or more of the persons named as guarantor; or
- (11) The unenforceability of this Guarantee or Indemnity against one or more of the Guarantors.

16.5 Guarantors' Acknowledgment

The Guarantors acknowledge that:

- (1) the Seller is not obliged to commence proceedings against the Buyer or enforce any rights against any

person before claiming under this Guarantee and Indemnity; and

- (2) they have read this contract and the Disclosure Statement and at the time of signing this contract as Guarantors, they were aware of their content.

16.6 Seller may Assign

The Seller may assign its rights under this Guarantee and Indemnity.

16.7 No Set Off

The Guarantors may not raise any set off or counter claim in reduction of their liability under this Guarantee and Indemnity.

16.8 Costs and Charges

The Guarantors must pay or reimburse to the Seller (as a first charge) for:

- (1) All costs, charges and expenses (including legal costs on an indemnity basis) incurred in enforcing this Guarantee and Indemnity; and
- (2) All duties, fees, taxes and charges payable in relation to this Guarantee and Indemnity or any payment, receipt or other transaction related to it.

16.9 Guarantors cannot Prove

Until the Seller has received all money payable to it by the Buyer or a Guarantor, the Guarantors:

- (1) must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors of such person; and
- (2) must hold any claim and any dividend received on trust for the Seller.

16.10 Failure to Sign

If any Guarantors fail to sign this contract as Guarantor, the Buyer will be in default of this contract and the Seller may terminate this contract at any time by giving notice to the Buyer.

16.11 Operates as a Deed

This clause takes effect, is signed and delivered as a Deed and binds the Guarantors jointly and severally (if more than one). The validity of this Guarantee and Indemnity as an agreement between the Seller and Guarantor is not affected in any way if this Guarantee and Indemnity does not take effect as a Deed.

17. GST

17.1 Purchase Price

Unless otherwise specified in this contract, the Purchase Price does not include the Seller's liability for GST payable on the supply of the Lot to the Buyer. The Buyer must, on the Settlement Date, pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the supply of the Lot. The Seller must give the Buyer a Tax Invoice at the Settlement Date.

17.2 Other Moneys

If any monies become payable by the Buyer to the Seller for any supply under this contract within the meaning of the GST Act (other than the GST inclusive Purchase Price) and GST is payable on such supply, the Buyer shall be responsible for the payment of any such GST on such supply which shall be payable by the Buyer to the Seller

upon the Seller providing the Buyer with a valid tax invoice for payment of the same.

18. Disclosure Statement

18.1 Forms Part of Contract

The Disclosure Statement forms part of this contract. Words used in the Disclosure Statement that are defined in this contract have the same meaning as they do in this contract unless the context otherwise requires.

18.2 Statutory Disclosure Statement

The Buyer acknowledges, for all purposes, that the "Disclosure Statement" (within the meaning of s213 of the Act) comprises so much of the contents of the Disclosure Statement as are necessary to constitute that statement only and not the entire contents of the Disclosure Statement.

18.3 Acknowledgment of Receipt

The Buyer acknowledges receiving the Disclosure Statement signed by or on behalf of the Seller before the Buyer entered into this contract.

19. Power of Attorney and Proxy

19.1 Power of Attorney

From the Settlement Date until 12 months after the date of Registration of the Plan, the Buyer jointly and severally and irrevocably appoints the Seller and each of the directors and officers of the Seller and their substitutes from time to time, jointly and severally, as the attorneys of the Buyer to perform and do all of the things, in the Seller's absolute discretion, and in the Buyer's name to the exclusion of the Buyer, as set out in the Power of Attorney Disclosure Statement that forms part of the Disclosure Statement. This clause operates as a Deed.

19.2 Proxy

From the Settlement Date until 12 months after the date of Registration of the Plan, the Buyer hereby irrevocably appoints the Seller and each of the directors and officers of the Seller and their substitutes from time to time, and including any corporate nominee of the Seller, as the proxy of the Buyer to vote at any general or committee meeting of the Body Corporate, to the exclusion of the Buyer, on the following matters:

- (1) The engagement of a person as the Body Corporate Manager or service contractor or authorisation of a person as letting agent;
- (2) Authorising a service contractor or letting agent to use a part of the common property;
- (3) Consenting to the recording of a new Community Management Statement to include, delete or amend a by-law;
- (4) Any other matter or thing referred to in the Power of Attorney Disclosure Statement that forms part of the Disclosure Statement, and
- (5) Such other matters which are provided for or disclosed to the Buyer in this contract, the Disclosure Statement or any further statement given under s214 of the Act.

19.3 Ratification

The Buyer must ratify and confirm any action taken by the Seller under this clause including all acts, deeds and things done or performed under the Power of Attorney and any action taken by the Seller to vote at meetings of the Body Corporate.

19.4 Obligation to pass on

While this Power of Attorney and proxy is in effect, the Buyer must not transfer, assign or mortgage the Lot unless the Buyer first obtains from any transferee, assignee or mortgagee a Power of Attorney and proxy by Deed Poll in favour of the Seller and its directors, officers and corporate nominee as the case may be in substantially the same form and effect as the "Deed Appointing Attorney" that forms part of the Disclosure Statement.

19.5 Buyer must not Vote

Until 12 months from the date of Registration of the Plan, the Buyer must not exercise any voting rights for any matter for which the Seller is entitled to use the Proxy under clause 19.2. If requested by the Seller, the Buyer will give the Seller a properly completed and signed proxy form in favour of the Seller or the Seller's director, officer or corporate nominee (as the Seller directs) on or before settlement. The Buyer must not revoke that proxy until 12 months following the date of Registration of the Plan. The Seller and any director, officer or corporate nominee appointed by the Seller will vote as the Buyer directs on any matter not covered by clause 19.2.

20. Not used

21. Electronic Settlement

21.1 Application

- (1) The parties agree to complete the transaction by Electronic Settlement and the terms of this clause will override any other provision of this Contract to the extent of any inconsistency.
- (2) This clause 21 will cease to apply if either party gives notice under clause 21.5 that settlement will not be an Electronic Settlement.

21.2 Completion of Electronic Workspace

- (1) The parties must
 - (a) ensure that the Electronic Workspace is completed, and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
 - (b) do everything else required in the Electronic Workspace to enable settlement to occur on the Settlement Date.
- (2) The parties must agree on a time for settlement, and if the parties cannot agree then the time nominated for settlement in the Electronic Workspace shall be 4.00pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing, then:
 - (a) the Buyer may, by written notice to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority; and
 - (b) for amounts to be paid to a destination account other than the Buyer's Solicitor's trust account, the Seller must, if requested, give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (4) If the Deposit Holder is not the Seller's Solicitor, the Deposit Holder must, if directed by the Seller at least

1 Business Day prior to the Settlement Date, pay the Deposit and any interest accrued as clear funds to the Seller's Solicitor to hold as Deposit Holder under the Contract, and the parties authorise the Deposit Holder to make such payment.

- (5) The Seller and Buyer authorise the Seller's Solicitor to pay the Deposit money and any interest as directed by the Seller in accordance with the Financial Settlement Schedule as source funds in the Electronic Workspace.

21.3 Electronic Settlement

- (1) Clause 8.2(4) and 8.3 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor will satisfy the Buyer's obligation in clause 8.1(1).
- (3) The Seller and Buyer are taken to have complied with their obligations under clause 17.4(3) and (4) as applicable if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with its obligations under clause 8.4(1):
 - (a) in relation to documents suitable for Electronic Lodgement in the Land Registry if at settlement, the documents are Digitally Signed within the Electronic Workspace (except to the extent the Seller is unable to sign because the Buyer or the Buyer's Financial Institution has not done something in the Electronic Workspace), and
 - (b) in relation to any other document or thing, by the Seller's Solicitor confirming prior to settlement that it holds the document/s or thing and will send the same to the Buyer or the Buyer's Solicitor promptly after settlement.
- (5) The parties acknowledge and agree that a party is not in default to the extent that it is prevented from complying with an obligation under this Contract because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (6) Any rights under the Contract or at law to terminate the Contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

21.4 Computer System Unavailable

If settlement fails and does not occur by 4.00pm AEST on the Settlement Date due to a computer system operated by the Land Registry, Office Of State Revenue, Reserve Bank, a Financial Institution or the ELNO is inoperative, then:

- (1) neither party will be in default of this Contract and the Settlement Date will be deemed to be the next Business Day and time remains of the essence, and
- (2) the Seller may at any time elect not to proceed with an Electronic Settlement by giving notice to the Buyer in which case the Settlement Date will be extended to the date 7 Business Days after giving the notice.

21.5 Withdrawal from Electronic Settlement

- (1) Subject to clause 21.5(2) either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party at any time before the Settlement Date if an Electronic Settlement cannot be effected due to the following reasons:
 - (a) the transaction is not a Qualifying Conveyancing Transaction; or

- (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator to their legal practice.
- (2) If clause 21.5(1) applies then:
 - (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal at the time of giving the notice; and
 - (b) The Settlement Date will be the later of 7 Business Days after giving the notice and the original Settlement Date.
- (3) This clause 21.5 does not apply and a party cannot give a notice not to proceed with Electronic Settlement, if the parties are compelled by statute to complete the transaction by Electronic Settlement.

21.6 Costs

Each party must pay its own costs, fees and charges (including legal costs) of using the ELNO System for Electronic Settlement.

21.7 Definitions

In this clause 21:

"Digitally Sign" and "Digital Signature" have the meaning in the ECNL.

"ECNL" means the Electronic Conveyancing National Law (Queensland).

"Electronic Conveyancing Documents" has the meaning in the *Land Title Act 1994*.

"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.

"Electronic Settlement" means settlement facilitated by an ELNO System.

"Electronic Workspace" means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

"ELNO" means PEXA or such other ELNO as defined in the ECNL as nominated by the Seller.

"ELNO System" means a system provided by ELNO for facilitating Financial Settlement and Electronic Lodgement.

"Financial Settlement" means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by the ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

22. Electronic Contract and Disclosure

22.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (1) agree to enter into this contract in electronic form; and
- (2) consent to either or both parties signing the contract using an Electronic Signature.

22.2 Pre-Contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any Notice or information required

by law to be given to the Buyer and which was given before the Buyer signed this contract.

23. General

23.1 Not used

23.2 Duty and Costs

The Buyer must pay all duty (including penalties) on this contract and all registration fees on the transfer. Otherwise, each party must bear their own costs. On settlement, the Seller may require the Buyer to prove that the Buyer has paid duty under this clause and if the Buyer does not provide such proof, then the Seller may require the Buyer to pay the amount of duty (including penalties) on settlement and the Seller will pay it to the Office of State Revenue.

23.3 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or required to be given by law may be given by:
 - (a) delivering or posting to the other party or its solicitor; or
 - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender);
 - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or other email address notified by the recipient to the sender).
- (4) Subject to clause 23.3(5) a notice given after this contract is entered into in accordance with clause 23.3(3) will be treated as given:
 - (a) Two (2) Business Days after posting;
 - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
 - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "Second Business Day") will be treated as given or delivered at 9am on the Second Business Day.
- (6) If two or more notices are treated as given at the same time under clause 23.3(5) they will be treated as given in the order in which they were sent or delivered.
- (7) Notices or other written communications by a party's solicitor (for example, varying the Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purpose of clause 22.2 and 23.3(3)(c) the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

23.4 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date falls on a day that is not a Business Day, then it falls on the next Business Day.

23.5 Rights After Settlement

Despite settlement and Registration of the Plan, any term of this contract that can take effect after settlement or registration remains in force.

23.6 Representations

Subject to any liability which cannot be excluded by the *Competition and Consumer Act 2010* and the *Corporations Act 2001*, the Seller disclaims all liability to any person relying on any information contained in any material or representations made to the Buyer other than contained in this contract or the Disclosure Statement in respect of any loss or damage (including consequential loss or damage) howsoever caused which may be suffered or arise directly or indirectly in respect of such information.

23.7 Personal Information

- (1) The Buyer acknowledges that the Seller has collected Personal Information of the Buyer and is permitted to use that information for any of the following purposes:
 - (a) to complete the transaction contemplated by this contract;
 - (b) to verify or confirm any information or details concerning the Buyer;
 - (c) to answer or handle any queries, complaints or matters raised by third parties concerning the transaction contemplated by this contract or generally concerning the Buyer's acquisition of the Lot; and
 - (d) to provide the same to any Body Corporate Manager, caretaker, building manager or letting agent for the Scheme.
- (2) The Seller is permitted to disclose the Personal Information of the Buyer to third parties in order to satisfy the purposes referred to in the above clause. Without limitation, the Seller is permitted to disclose the Buyer's contact details to neighbours in relation to fencing queries and the Local Authority or other Authorities or organisations in relation to community services and facilities. The Buyer is able to gain access to any Personal Information of the Buyer held by the Seller by written request to the Seller.

23.8 Severance

If anything in this contract is unenforceable, illegal or void then it is severed and the rest of this contract remains in force.

23.9 No Waiver

The Seller's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver by the Seller is effective unless it is in writing.

23.10 Entire Agreement

This contract and the documents referred to herein contain the entire agreement and understanding between the parties on the subject matter of this contract, and supersede all prior negotiations.

23.11 Counterparts and Facsimile

This contract may be executed in any number of counterparts with same effect as if the signatures to each counterpart were on the same instrument. Both parties acknowledge and agree that the original of this Contract may be in facsimile or electronic form and agree to accept the facsimile or electronic copy as the original and binding Contract. An electronic copy may be signed using an Electronic Signature. Although this contract is not

conditional upon the subsequent execution of an original and duplicate by the parties, either party may request the other party to execute an original and duplicate of this contract in which case the parties agree to do so.

23.12 Amendments/Extensions

No variation to this contract is valid unless it is in writing and signed by the parties or their solicitors (this may be by exchange of correspondence). The Buyer acknowledges that no real estate agent or other consultant appointed by the Seller has authority to vary or waive any term of this contract, except the Seller's Solicitors. Changes or variations to this contract at or about the time of signing are not enforceable against the Seller unless the changes have been initialled by the Seller or accepted by the Seller through notice in writing by the Seller's Solicitors.

23.13 Trust Provisions

- (1) The Buyer warrants to the Seller that the Buyer is not buying the Lot as trustee of an undisclosed trust.
- (2) If the Buyer is buying the Lot as trustee of a trust, the Buyer warrants that:
 - (a) the Buyer is the sole trustee/s of the trust;
 - (b) the Buyer has the power to enter into this contract;
 - (c) the Buyer has done everything necessary to ensure that the Buyer is entitled to indemnity from the trust against liability under this contract and the Buyer will not do anything to prejudice this right of indemnity;
 - (d) the Buyer will give the Seller copies of all relevant trust documentation if requested; and
 - (e) the Buyer will not allow a variation of the trust or any re-settlement or advance or distribution of capital before settlement of this contract.
- (3) If the Buyer is buying the Lot as trustee then the Buyer is bound both personally and in its capacity as trustee.

23.14 Assignment by Seller

- (1) The Seller may assign its interest in the Parent Land and under this contract (including the benefit of any obligations owed to the Seller including any power of attorney, proxy or guarantee) either before or after settlement to any person without the Buyer's consent provided the Seller delivers to the Buyer:
 - (a) a notice of assignment of the Seller's interest in this Contract in accordance with s199 of the *Property Law Act 1974 (Qld)*; and
 - (b) a deed poll signed by the assignee in favour of the Buyer whereby the assignee agrees to be bound by the terms of this contract (including obligations arising before the date of assignment).
- (2) Upon delivery of the notice and deed poll under the above sub-clause:
 - (a) The Seller is released from all liabilities and obligations under this Contract (including obligations arising before the date of assignment),
 - (b) the Buyer and Guarantor (if any) will be bound by this contract as though the assignee is the Seller named in this contract,
 - (c) if the Deposit has been paid by Bank Guarantee then the Buyer must provide a replacement Bank Guarantee in favour of the assignee within 10 Business Days.
- (3) Without limiting the effect of the above, the Buyer will, if requested by the Seller, enter into a Deed of Novation in which the Buyer:

- (a) agrees to be bound to the assignee;
- (b) waives any cooling off period that comes into effect as a result of the novation, and
- (c) agrees to release the Seller from this contract; in accordance with this clause.

23.15 Assignment by Buyer

The Buyer must not assign its interest under this contract without the Seller's consent. If the Seller does consent, it may do so on such conditions as it sees fit.

23.16 Caveat

The Buyer must not lodge a caveat over the Parent Land or the Lot. The Buyer irrevocably appoints the Seller and each of the directors and officers of the Seller and their substitutes from time to time, jointly and severally as the attorneys of the Buyer to do all things and sign all documents necessary to remove any caveat lodged by the Buyer over the Parent Land or the Lot in contravention of this clause.

23.17 CGT Withholding

- (1) This clause applies only if both the following applies:
 - (a) the sale is not an excluded transaction under s14-215 of the Withholding Law; and
 - (b) the Seller has not given the Buyer on or before settlement either an ATO Clearance Certificate or a Variation Notice under the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil.
- (2) The Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation.
- (3) The Buyer must lodge a Foreign Resident Capital Gains Withholding Purchaser Notification Form with the Australian Taxation Office for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement.
- (4) The Buyer must pay the CGT Withholding Amount to the Commissioner of Taxation in accordance with the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (5) The market value of the CGT asset for the purpose of the Withholding Law is taken to be the Purchase Price less any CGT included in the Purchase Price for which the Buyer is entitled to an input tax credit.

23.18 Special Conditions

The special conditions in Part B of this contract (if any) form part of this contract. If there is any inconsistency between these contract terms and a special condition, the special condition prevails.

23.19 Interpretation

- (1) **Plurals and Genders**
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 or corporation; and
 - (d) a party includes the party's executors, administrators, successors and permitted assigns.
- (2) **Parties**
If a party consists of more than one person, this contract binds them jointly and each of them

individually and a representation or warranty in favour of more than one person is for the benefit of them jointly and each of them individually.

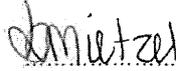
- (3) **Statutes and Regulations**
Reference to statutes includes all statutes amending, consolidating or replacing them.
- (4) **Inconsistencies**
If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.
- (5) **Headings**
Headings are for convenience only and do not form part of this contract or affect its interpretation
- (6) **Documents**
Reference to a document includes any changes to or replacements of it.

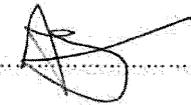
23.20 Governing Law

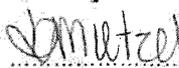
This contract is governed by the laws of Queensland.

PART D
SIGNING PAGE

BUYER


.....
Witness


.....
Buyer


.....
Witness


.....
Buyer

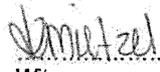
(Note: no witness is required if the Buyer signs using an Electronic Signature)

By placing my signature above I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign

GUARANTOR


.....
Witness


.....
Guarantor


.....
Witness


.....
Guarantor

(Note: no witness is required if the Guarantor signs using an Electronic Signature)

By placing my signature above I warrant that I am the Guarantor named in the Reference Schedule

SELLER

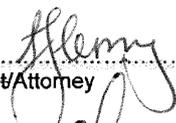
EXECUTED by **PROFESSIONAL DEVELOPMENTS**)
PTY LTD ACN 647 268 335 as Seller in accordance)
with section 127 of the *Corporations Act 2001*)
)
)
)
)

.....
Director

OR

.....
Director / Secretary

PROFESSIONAL DEVELOPMENTS PTY LTD ACN)
647 268 335 by its duly appointed agent/attorney Alison)
Margaret Fleming / Paul Hayden McHugh)
)
)
)
)


.....
Agent/Attorney


.....
Witness

By placing my signature above, I warrant that I am authorised by the Seller to sign. Note: no witness is required if the agent/attorney signs using an Electronic Signature