



**david k lawyers pty ltd**

## CONTRACT OF SALE

“ROCHEDALE OUTLOOK”

THIRD STAGE  
(KNOWN AS STAGE 4)

281 GARDNER ROAD,  
ROCHEDALE QLD

## Contract Date

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### Parties

HERAN CONSOLIDATED PTY LTD A.C.N. 125 668 260 (**Seller**)

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(**Buyer**)

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(**Guarantor**)

### It is agreed

#### 1. Reference Schedule and interpretation

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##### 1.1 Reference Schedule

Where a term used in this contract appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

<b>Seller's Address</b>	Address:	301-302/ 50 Marine Parade SOUTHPORT QLD 4215
<b>Seller's Solicitor</b>	Name:	David K Lawyers
	Address:	Level 12, 300 Queen Street, Brisbane QLD 4000
	Postal Address:	GPO Box 5041, Brisbane QLD 4001
	Telephone:	07 3102 2583
	Facsimile:	07 3839 3006
	Electronic Mail:	mary@davidklawyers.com.au
	Attention:	Maryam Gerayelou

<b>Buyer's Address</b>	Name: _____ Address: _____ Telephone: _____ Electronic Mail: _____
<b>Buyer's Solicitor</b>	Name: _____ Address: _____ Telephone: _____ Electronic Mail: _____
<b>Guarantor's Address</b>	Address: _____ Telephone: _____ Electronic Mail: _____
<b>Agent</b>	Name: _____ Address: _____ Telephone: _____ Electronic Mail: _____
<b>Lot</b>	Proposed Lot number _____ in the Scheme as shown approximately on the Disclosure Plan
<b>Land</b>	281 Gardner Road, Rochedale in the State of Queensland more particularly described as Lot 10 on SP 223421 bearing title reference 50926293

<b>Purchase Price</b> <i>(see clause 3)</i>	\$.....
<b>Initial Deposit</b>	\$_____ payable when the Buyer signs this Contract
<b>Balance Deposit</b> <i>(see clause 3.2)</i>	\$_____ payable the later of 14 Days from Contract Date or upon satisfaction or waiver of the Finance Condition (if any)
<b>Deposit Holder</b> <i>(see clause 3.2)</i>	David K Lawyers
<b>Deposit Holder's Trust Account Details</b>	BSB No. 034 003 Account No. 312 056 Account Name David K Lawyers Law Practice Trust Bank Westpac Banking Corporation Ref Lot __ 'Rochedale Outlook'
<b>Scheme</b>	Rochedale Outlook Community Titles Scheme
<b>Settlement</b> <i>(see clause 22)</i>	<b>Settlement Date:</b> See clause 22.1 <b>Settlement Place:</b> See clause 22.2
<b>Pre-Sales Date</b> <i>(see clause 5.2)</i>	2 years from Contract Date
<b>Scheme Date</b> <i>(see clause 5.3)</i>	47 Months from the Contract Date
<b>Sunset Date</b> <i>(see clause 13)</i>	4 years from Contract Date
<b>Finance Approval</b> <i>(see clause 15)</i>	Is the contract subject to the Buyer obtaining finance approval?  <b>No:</b> <input type="checkbox"/> <b>Yes:</b> <input type="checkbox"/> <small>(Buyer to place a "✓" in the appropriate box. NOTE: If "yes" is ticked Special Condition 15 will take effect)</small>
<b>Trustee or Company Buyer</b> <i>(see clause 18)</i>	Is the Buyer a corporation or a trustee of a trust?  <b>No:</b> <input type="checkbox"/> <b>Yes:</b> <input type="checkbox"/> <small>(if answer is 'yes' then a personal guarantee must be provided in accordance with the requirements of clause 30)</small>
<b>Buyer's residency status</b> <i>(see clause 29)</i>	Australian Resident <input type="checkbox"/> Non Australian Resident <input type="checkbox"/> <small>(Buyer to place a "✓" in the appropriate box. NOTE: * "Non Australian Resident" means a person to whom Section 26A of the Foreign Acquisitions and Takeovers Act 1975 (Cth) applies)</small>
<b>Buyer's additional details</b>	<b>Owner Occupier</b> <input type="checkbox"/> <b>Investor</b> <input type="checkbox"/> Tax File Number: _____ Date of Birth: _____ Tax File Number: _____ Date of Birth: _____ <small>(Please note that the Buyer's tax file number and date of birth is required for investment of the Deposit in accordance with clause 3.3)</small>

## 1.2 Definitions

In this Contract unless the context otherwise requires:

“**Act**” means the *Body Corporate and Community Management Act 1997* (as amended from time to time).

“**ADI**” has the meaning given to it in section 5 of the *Banking Act 1959* (Cth).

“**Architect**” means the architect nominated by the Seller from time to time for the purpose of this Contract.

“**Approval**” means an approval, allowance, authorisation, certificate, concession, consent, declaration, exemption, filing, licence, lodgement, permit, right or waiver and any condition attaching to any of them and any replacement, renewal or amendment of any of them and includes a development approval and a development permit.

“**Approved Safety Switch**” has the meaning given in the *Electrical Safety Regulation 2013 (Qld)*.

“**Authorised Officer**” of a party which is a corporation means:

- (a) an employee of the party whose title contains either of the words Director or Manager;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this contract and notified to the others.

“**Authority**” means any government semi-government, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

“**Balance Deposit**” means the amount referred to in the Reference Schedule

“**Balance Purchase Price**” means the Purchase Price less the Deposit, adjusted as required under this contract.

“**Bank**” means an ADI holding a consent under the *Banking Act 1959* (Cth) to call itself a bank.

“**Bank Cheque**” means a cheque drawn by a Bank on itself.

“**Body Corporate**” means the Body Corporate created on establishment of the Community Titles Scheme.

“**Body Corporate Agreement**” means the agreements and arrangements to be entered into by the Body Corporate and disclosed in the Disclosure Statement.

“**Buildings**” means the improvements to be made to part of the Scheme Land (including the building of which the lot will be part) as part of the Development.

“**Business Day**” means a day other than:

- (a) a Saturday or Sunday; and
- (b) a public holiday in Brisbane

“**By-Laws**” means the by-laws for the Scheme contained in the CMS.

“**Caretaking Agreement**” means the caretaking agreement in schedule 8 of the Disclosure Document.

“**Chattels**” means the chattels, equipment and fittings listed in the Schedule of Finishes included in the Lot or any alternative Chattels substituted under the provisions of this contract.

“**Claim**” means, in relation to a person, any action, allegation, claim, demand, judgment, Liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this contract.

**“Common Property”** means the common property created upon establishment of the Scheme and being so much of the Building and Land which is not comprised in any Lot.

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

**“Community Management Statement” or “CMS”** means the proposed statement by that name contained in Schedule 4 of the Disclosure Statement.

**“Community Title Scheme” or “Scheme”** means the Community Title Scheme which will be established under the Act on registration of the Plan and recording of the Community Management Statement by the Registrar of Titles.

**“Compliant Smoke Alarm”** means a smoke alarm complying with sections 104RB(2) or (4) of the *Fire and Emergency Services Act 1990* (Qld)

**“Construction Activities”** means any construction, building, repair, maintenance or similar works proposed or being carried out on the Land including vehicle and crane movements, construction and material delivery and rock anchoring or shoring, which may affect the Scheme or any owner or occupier of a lot in the Scheme.

**“Contract Date”** means the date of this contract.

**“Council”** means the Brisbane City Council

**“Council Development Approval”** means the drawings, plans and related documents as approved under the terms of Judgment of the Planning and Environment Court dated 20 August 2019 in matter no. 1255 of 20149

**“Cost”** means any cost, charge, expense, outgoing, payment or other expenditure of any nature including legal fees on a full indemnity basis, and whether calculated on a time charge basis or otherwise.

**“Deposit”** means the total deposit monies consisting of the Initial Deposit and the Balance Deposit.

**“Deposit Holder”** means the Deposit Holder as specified in the Reference Schedule of this Contract.

**“Default Interest Rate”** means the standard default contract rate published by the Queensland Law Society at the due date for payment of the relevant amount.

**“Defects Liability Period”** means the period from the Settlement Date to the date that is ninety (90) days from the Settlement Date.

**“Development”** means the residential complex comprising of eighty-one (81) units and Facilities known as the “Rochedale Outlook” Community Titles Scheme to be carried out on part of the Land generally in the way outlined in the Plans and Specifications and the Community Management Statement

**“Disclosure Plan”** means the plan in schedule 1 of the Disclosure Statement.

**“Disclosure Statement”** means the Disclosure Statement that accompanies this Contract containing the statements due under the Act (as amended from time to time).

**“Encumbrances”** means:

- (a) any encumbrances created or implied under the Act or the Land Title Act;
- (b) any encumbrances set out or provided for elsewhere in this contract or the Disclosure Statement; and

(c) all matters and things contained in the Community Management Statement.

**“Essential Term”** means the terms specified in Clause 30 any other term stated in this contract to be an essential term and any other term a Court finds to be essential.

**“Facilities”** means any common amenities constructed or to be constructed as part of the Development and as shown and/or described in the Plans and Specifications.

**“Further Statement”** means the Further Statement to be given to the Buyer containing any variations or inaccuracies in the Disclosure Statement in accordance with the Act and the *Land Sales Act 1984* (as amended from time to time).

**“General Purpose Socket Outlet”** has the meaning given in the *Electrical Safety Regulation 2013* (Qld).

**“Government Body”** means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

**“GST”** has the same meaning given to that term in the GST Law.

**“GST Law”** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**“Initial Deposit”** means the amount referred to in the Reference Schedule.

**“Interest Schedule Lot Entitlement”** means the number allocated to a lot as specified in the interest schedule contained in Schedule A of the Community Management Statement.

**“Keys”** means keys, codes or devices.

**“Land”** means the land as described in the Reference Schedule of this Contract.

**“Land Registry”** means the land registry established under the Land Title Act at which the Plan was lodged or will be lodged for registration.

**“Land Title Act”** means the Land Title Act 1994 (Qld).

**“Letting Agreement”** means the letting agreement in schedule 9 of the Disclosure Document.

**“Liabilities”** means any liabilities, debts or Obligations, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

**“Lot”** means the property the Seller has agreed to sell and the Buyer has agreed to purchase, as specified in the Reference Schedule of this Contract and the Disclosure Statement.

**“Lot Entitlement”** means the number allocated to the Lot in the Contribution Schedule or Interest Schedule of the Community Management Statement.

**“Object”** means to object generally and includes:

- (a) Object to a variation, change or substitution;
- (b) Object to title to the Land;
- (c) avoid or attempt to avoid this contract;

- (d) refuse to settle of this Contract;
- (e) delay settlement of this Contract;
- (f) claim compensation or any reduction in the Purchase Price;
- (g) retain any part of the Purchase Price;
- (h) require the Seller to carry out any works to the Property;
- (i) withhold consent;
- (j) make any claim, demand appeal or suit of any nature; or
- (k) seek an injunction.

**“Obligation”** means any obligation, commitment, liability, covenant, undertaking or duty whether arising by operation of law, in equity or by statute and whether expressed or implied.

**“Outgoings”** means:

- (a) rates, levies or charges by any Government Body (for example, council rates, water rates, fire service levies);
- (b) land tax;
- (c) regular periodic or other contributions payable to the Body Corporate; and
- (d) insurance premiums payable by the Seller under section 191(2) of the BCCM Act.

**“Personal Information”** means all personal information, as defined in the Privacy Act, relating to the Buyer, including all personal information set out in this Contract and otherwise disclosed by the Buyer to the Seller whether prior to or after the date of this Contract.

**“Plan”** means the building format plan of survey which will when registered create a separate and indefeasible title for the Lot.

**“Plans and Specifications”** means the approved plans for the construction of the Buildings as contained in the Council Development Approval and the Schedule of Features and Finishes but subject to any variations permitted by this Contract, whether or not such variations are the subject of an amendment of the Council Development Approval.

**“Privacy Act”** means the *Privacy Act 1988 (Cth)* and any regulations, ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instrument made or issued under that act, as amended from time to time.

**“Project Manager”** means the Project Manager nominated by the Seller from time to time for the purpose of this Contract.

**“Proxy Form”** means the proxy form contained in the Disclosure Statement or such other form as updated by the Seller from time to time or such related form provided by the Seller to the Buyer on or before the Settlement Date;

**“Privacy Officer”** means so far as the Seller is concerned, “Privacy Officer” of Heran Consolidated Pty Ltd A.C.N. 125 668 260 of 301-302/150 Marine Pde, Southport QLD 4215;

**“Purchase Price”** means the amount referred to in the Reference Schedule

**“Regulation Module”** means the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (as amended from time to time) of which is applicable to the Scheme.

**“Reference Schedule”** means the schedule in **Clause 1.1**.

**“Schedule of Features and Finishes”** means the features and finishes to the Development, the Buildings and the Lot as prepared by the Seller some of which are reproduced in the Disclosure Statement but subject to any variations permitted by this Contract, whether or not such variations are the subject of an amendment of the Council Development Approval.

**“Settlement”** means the settlement of the sale and purchase of the Lot on the Settlement Date in accordance with the provisions of this contract.

**“Settlement Date”** means the date referred to in **Clause 22.1**

**“Sunset Date”** means the date 4 years from the Contract Date

**“Transfer Documents”** means:

- (a) the form of transfer under the Land Title Act required to transfer title in the Lot to the Buyer; and
- (b) any other document to be signed by the Seller necessary to stamp or register the transfer.

**“Utility Infrastructure”** has the meaning given to it in the BCCM Act.

**“Utility Services”** means:

- (a) hot or cold water reticulation or supply;
- (b) gas reticulation or supply;
- (c) electricity supply;
- (d) air-conditioning;
- (e) a telephone or communication service;
- (f) a computer, data or television service;
- (g) a sewer system;
- (h) a drainage or stormwater system or service;
- (i) an irrigation or water storage system;
- (j) a system or service for the removal or disposal of garbage or waste;
- (k) a cleaning system or service (exterior or interior);
- (l) a building management system;
- (m) emergency and fire control systems;
- (n) an exhaust or ventilation system;
- (o) fire sprinkler systems and hydraulic systems;
- (p) a grease or pollutant trap service; and
- (q) any other system or service designed to improve the amenity or enhance the enjoyment of the Common Property or the Lots.

**“Variations”** means changes and/or variations (as the context requires) to the Development including changes and/or variations to the: -

- (a) method of construction;

- (b) construction materials;
- (c) number of lots within the Development;
- (d) facilities;
- (e) access arrangements;
- (f) landscaping;
- (g) composition;
- (h) density;
- (i) mix of uses;
- (j) design;
- (k) location of lots within the Development;
- (l) layout;
- (m) description of exclusive use Common Property Areas; and
- (n) descriptions or identification numbers of lots, units, levels and plans

### **1.3 Interpretation**

- (a) Unless the contrary intention appears, a reference in this contract to:
  - (i) this contract or another document includes any variation or replacement of it despite any change in the identity of the parties;
  - (ii) one gender includes the others;
  - (iii) the singular includes the plural and the plural includes the singular;
  - (iv) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them
  - (v) an item, recital, clause, paragraph, schedule or annexure is to an item, recital, clause, paragraph of, or schedule or annexure to, this contract and a reference to this contract includes any schedule or annexure;
  - (vi) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - (vii) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - (ix) money is to Australian dollars, unless otherwise stated; and
  - (x) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this contract.

- (e) A provision of this contract must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this contract or the inclusion of the provision in this contract.
- (f) Business Days
  - (i) If anything under this contract must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
  - (ii) If an act is required to be done on a particular day it must be done before 5.00pm on that day or it will be considered to have been done on the following day.
- (g) Parties
  - (i) If a party consists of more than one person, this contract binds each of them separately and any two or more of them jointly.
  - (ii) An agreement, covenant, Obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
  - (iii) An agreement, covenant, Obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

## **2. Agreement to Buy & Sell**

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### **2.1 Agreement**

The Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller an estate in fee simple in the Lot for the Purchase Price on the provisions of this contract.

### **2.2 Buyer's acknowledgement**

The Buyer acknowledges that:

- (a) the Buyer received and signed the Disclosure Statement before signing this contract; and
- (b) the Disclosure Statement forms part of this contract.

### **2.3 BCCM Act**

- (a) Nothing in this contract affects the rights or Obligations of a party under the BCCM Act.
- (b) To the extent that there is any inconsistency between the provisions of the BCCM Act and this contract, the provisions of the BCCM Act prevail.

### **2.4 Special Conditions**

- (a) Any special conditions to this contract are in Schedule 1 and form part of this contract.
- (b) If Schedule 1 is not completed, no special condition is included in or intended to form part of this contract.
- (c) To the extent that there is any inconsistency between the provisions of this contract and the special conditions, the special conditions in Schedule 1 prevail.

## **3. Purchase Price**

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**3.1** The Purchase Price shall be payable by the Buyer in the following manner:

- (a) the Deposit which shall be paid to the Deposit Holder in the manner set out in the Reference

## Schedule

- (b) the Balance Purchase Price which shall be paid by the Buyer to the Seller by bank cheque on the Settlement Date as the Seller directs.

### 3.2 Deposit

- (a) 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.
- (b) The Buyer will be in default if it:
  - (i) does not pay the Deposit when required;
  - (ii) pays the Deposit by post-dated cheque; or
  - (iii) pays the Deposit by cheque which is dishonoured on presentation.
- (c) The Seller may recover from the Buyer any part of the Deposit which is not paid when required as a liquidated debt.
- (d) The entitlement of the parties to receive the Deposit and any interest on the Deposit is to be determined as follows:
  - (i) if this contract settles, the Seller is entitled to the Deposit and the Seller is entitled to the interest on the Deposit;
  - (ii) if this contract is terminated without default by the Buyer, the Buyer is entitled to the Deposit and any interest on the Deposit; and
  - (iii) if this contract is terminated owing to the Buyer's default, the Seller is entitled to the Deposit and any interest on the Deposit;.
- (d) If the Deposit Holder is the Seller's Solicitor, the Seller's Solicitor may continue to act for the Seller despite any default by the Buyer under this contract.
- (e) Under no circumstances will the Deposit exceed 20% of the Purchase Price before Settlement. If the Seller allows the Buyer a discount, rebate or otherwise agrees to reduce the Purchase Price for any reason, or any circumstance arises which may lead to the Deposit exceeding 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, the Buyer will immediately be entitled to a refund of any money that would otherwise result in the 20% Deposit limit being exceeded or be entitled to reduce the Security Deposit to an amount equal to 20% of the actual purchase price the Buyer is obliged to pay for the Lot.
- (f) The Buyer authorises the Deposit Holder to release the Deposit to the Seller immediately, should any of the following occur:
  - (i) settlement of this Contract; or
  - (ii) the Deposit is forfeited pursuant to the terms of this Contract

### 3.3 Investment of Deposit

- (a) If either the Buyer or Seller request that the Deposit be invested then the Deposit Holder is irrevocably authorised to invest the funds in its name in an interest bearing account with a Bank nominated by the Deposit Holder.
- (b) The Deposit is invested at the risk of the person eventually entitled to receive it.

- (c) The Deposit Holder will not be liable to any party by reason of delay in investing the Deposit or for failure to invest the Deposit.
- (d) The Deposit Holder is authorised to terminate the investment of the Deposit a reasonable time before settlement so that the Deposit and interest earned on the investment of the deposit will be available at settlement.
- (e) Any interest paid on such investment must be held by the Deposit Holder in trust until either the Seller or the Buyer becomes entitled to it under this Contract or at law. The interest will not be held by the Deposit Holder by way of Deposit but under an unrelated trust and under no circumstances will the Seller or the Buyer be entitled to receive any of the interest before this Contract is settled or cancelled.
- (f) The Buyer must provide its tax file number and any other information that the Deposit Holder requires for investment within five Business Days from the date on which the Seller asks for it. If the Buyer does not do so, the Buyer acknowledges that the Bank with whom the Deposit is invested may deduct tax from the interest earned on the Deposit at the highest marginal rate.

### 3.4 Payment of Balance Purchase Price

On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank Cheque as the Seller directs.

### 3.5 Adjustments to the Balance Purchase Price

- (a) The Seller is liable for Outgoings up to and including the day prior to the date that the plan creating an indefeasible title for the Lot is lodged at the Land Registry. The Buyer is liable for Outgoings from the date that the plan creating an indefeasible title for the Lot is lodged at the Land Registry or in so far as it relates to Body Corporate levies, the date of striking the Body Corporate levies.
- (b) If an Outgoing (except Land Tax) for the Land has been paid by the Seller which is required to be apportioned in accordance with **Clause 3.5(a)**, then an adjustment will be made at settlement on the basis that the amount applicable to the Lot is as follows: -

$$(A \div B \times C)$$

A the amount of the Outgoing paid by the Seller for the Land

B is the Aggregate Interest Schedule Lot Entitlement of all lots in the Plan in the Interest Schedule of the Community Management Statement

C is the Interest Schedule Lot Entitlement of the Lot in the Interest Schedule of the Community Management Statement

- (c) If Land Tax is unpaid on the Settlement Date then the Seller must pay the Land Tax within a reasonable time after the Land Tax Assessment issues.
- (d) The Buyer and the Seller must adjust Land Tax on the basis that land tax has been paid and that at midnight on the previous 30 June, the Seller owned no land other than the Land.
- (e) The Land Tax adjustment is to be made on the amount equal to: -

$$(A \div B \times C)$$

A is the amount of Land Tax paid by the Seller on the Land at the previous 30 June

B is the Aggregate Interest Schedule Lot Entitlement of all lots in the Plan in the Interest Schedule of the Community Management Statement

C is the Interest Schedule Lot Entitlement of the Lot in the Interest Schedule of the Community Management Statement

- (f) If the Buyer is unable to obtain a Land Tax Clearance Certificate for the Land or the Lot on or before the Settlement Date then: -

- (i) the Buyer must accept the Seller's undertaking (which is hereby given) that it will pay the Land Tax owing on the Land by the due date; and
  - (ii) the Buyer will not be entitled to any retention from the Balance Purchase Price, nor will the Buyer require payment of, any outstanding land tax on or before the Settlement Date.
  - (iii) Despite **Condition 3.5 (e)**, The Seller may elect to apportion Land Tax on the amount specified by the Office of State Revenue to be the amount required to be paid to obtain a Land Tax Clearance Certificate for the Lot.
- (g) 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 Seller need not comply with an obligation to pay an Outgoing until the readjustment is made.
  - (h) No adjustment is to be made to the Balance Purchase Price in respect of water usage.
  - (i) No adjustment is to be made to the Balance Purchase Price in respect of bank cheque fees.

#### **4. Matters affecting the Lot and Scheme**

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##### **4.1 Title**

The Buyer shall take title to the Lot subject to the Act and the following:

- (a) the lot entitlement and all matters contained in or endorsed upon or annexed to the Plan and Community Management Statement;
- (b) the easements for access, support, shelter and services expressed or implied in favour of or against the owner of a Lot and all ancillary rights thereto by virtue of the Act;
- (c) the By-Laws of the Body Corporate in force upon registration of the Plan and as added to, varied, repealed or amended subsequent thereto;
- (d) all notifications, easements and restrictions (other than any mortgage) noted on the certificates of title to the Land and/or the certificate of title to the Lot when it issues under the Act and the Regulation Module;
- (e) any transfer, lease, easement, occupation authority, licence or other right over the Common Property or any part thereof given to a Government Body, the applicable electricity authority, Energex, Telstra, Queensland Electricity Commission or other statutory authority, or any other Purchaser of a lot or lots in the Scheme or any other person;
- (f) any easement over the Land registered prior to registration of the Plan whether as part of the Common Property or the Lot;
- (g) any road dedication or other works required by a Government Body;
- (h) easements for underground drainage, storm water, overland flow and access purposes as required over the existing and proposed underground stormwater pipe drainage system and the overland flow path traversing the site;
- (i) a Building Management Statement substantially in accordance with the draft contained in the Disclosure Statement (if any);
- (j) any easements or other encumbrances required by a Government Body or otherwise required to complete the Seller's development of the Land;
- (k) any DSI offset under the Land Valuation Act 2010 noted on the certificates of title to the Land and/ or the certificate of title to the Lot when it issues under the Act and Regulation Module;
- (l) any matters required under a development approval concerning the Land; and

- (m) the residential tenancies created, if any, pursuant to **Clause 31**.

## 4.2 Development of the Land

- (a) The Buyer acknowledges that the Development will be constructed in the following manner: -
- (i) Initial Stage (Known as Stage 2) – part of the Scheme Land will be sub-divided by building format plan into twenty-four (24) lots for residential purposes, Common Property and lot 500 (“Balance Lot”) which will be further sub-divided to create the remaining stage/s of the Development;
  - (ii) Subsequent Stage (Known as Stage 3) – the Balance Lot will be sub-divided by a building format plan into thirty (30) lots for residential purposes, Common Property and lot 501 (“Balance Lot”) which will be further sub-divided to create the remaining stage of the Development; and
  - (iii) Final Stage (Known as Stage 4) – the Balance Lot will be sub-divided by a building format plan into thirty (30) lots for residential purposes and Common Property.
- (b) To facilitate the Development, the Seller (or any nominee) may at any time, enter onto the Scheme and any lot in the Scheme (except that after Settlement the Lot may only be entered after reasonable notice has been given to the Buyer other than in the case of an emergency where no such notice will be required) to undertake works of any kind for the purpose of developing the Land (which may extend to attending to any rectification works) including:
- (i) Construction Activities; and
  - (ii) establishing Utility Infrastructure and Utility Services,
- (Development Works).**
- (c) The Seller may bring upon the Scheme any machinery, tools, equipment, vehicles and workmen to facilitate the carrying out of the Development Works.
- (d) The Seller will use reasonable endeavours to ensure that the Development Works are carried out in a manner which minimises (so far as practicable) the inconvenience (if any) caused to the Body Corporate or to the owners and occupiers of lots in the Scheme.
- (e) The Buyer agrees not to Object in respect of any noise, dust, traffic or nuisance which may arise in connection with the Development Works.
- (f) The Buyer agrees that the Seller is entitled to uninterrupted access over and to the Common Property and to any lot to carry out and undertake the Development Works.
- (g) The Buyer agrees that the Seller may cordon off or close off an area of the Common Property to allow the Development Works to be undertaken.
- (h) Until construction of the Development is completed (as reasonably determined by the Seller), the Buyer agrees that:
- (i) the Buyer will not lodge or make (or assist or cause any person to lodge or make) any objection against any development application or other application relating to the Development; and
  - (ii) the Buyer will not sell or transfer the lot except to a buyer or transferee who signs a deed of covenant in favour of the Seller agreeing to be bound by and comply with the provisions of this clause 4.2 (including this clause 4.2(h)(ii)).
- (i) The deed of covenant will contain such provisions as the Seller may reasonably require.
- (j) The provisions of this clause 4.2 survive the Settlement of this contract.

### 4.3 Requisitions

- (a) The Buyer may not deliver any requisitions or enquiries on title.

### 4.4 Seller's statements

- (a) The Seller states that, except as disclosed in this contract, each of the following statements is or will be accurate:
  - (i) it has the capacity and power to enter into this contract;
  - (ii) if, on Settlement, there is a mortgage over the Lot, a release of the mortgage in respect of the Lot will be provided at Settlement;
  - (iii) if the Transfer Documents given to the Buyer on Settlement are executed by an attorney of the Seller, then the relevant power of attorney will be registered at the Land Registry by Settlement; and
  - (iv) at Settlement:
    - (A) the Seller will have no knowledge or notice of any special contribution to be levied on the owner of the Lot;
    - (B) no order will have been made for the termination of the Scheme or the dissolution of the Body Corporate;
    - (C) the Body Corporate will not have mortgaged or charged any of its assets to secure the payment or repayment of money owing or borrowed by it;
    - (D) there will be no unsatisfied judgment against the Body Corporate; and
    - (E) there will be no unsatisfied judgment, order or writ affecting the Lot.
- (b) If a statement in **clause 4.4(a)** is not accurate and the Buyer is materially prejudiced by the inaccuracy (the onus of proof being on the Buyer), the Buyer may terminate this contract by written notice to the Seller and in that case:
  - (i) the Deposit must be refunded to the Buyer together with any interest earned on the investment of the Deposit; and
  - (ii) neither party will have any Claim against the other party.

### 4.5 Changes to the Building or Lot

The following changes may be made:

- (a) the area of the Lot as shown on the registered Plan may be up to 5% different from the area shown on the Disclosure Plan;
- (b) subject to subclause 4.5(a), any change to any dimensions, measurements or areas shown on the Plans which do not materially prejudice the Buyer (and, without limitation, the Buyer accepts that the dimensions of any volumetric lot that will contain the retail component of the Development may change and the area of the Common Property may be reduced);
- (c) the amalgamation of any lots in the Scheme other than the Lot;

- (d) any change to the lot number allocated to the Lot as shown on the Disclosure Plan;
- (e) any change to the internal design or layout of the Lot that does not materially prejudice the Buyer;
- (f) any change to the location of the Lot within the Building if the changed location does not materially prejudice the Buyer;
- (g) any change to the Development or the Plans required by any Government Body or due to any Approval;
- (h) any change to the Development or the Plans as a result of good or prudent building practices or improved building design that do not materially prejudice the Buyer; or
- (i) any change to the Development or the Plans as a result of practical, engineering or construction difficulties arising during the course of construction which are beyond the reasonable control of the Seller,
- (j) the Seller substituting items relating to the Schedule of Features and Finishes as long as the Project Manager is satisfied (acting reasonably) that the new items are of similar quality as the items being substituted;

and the Buyer cannot Object to the matters set out in this clause.

#### **4.6 Changes to Body Corporate Agreements**

- (a) The Seller may change the provisions of any Body Corporate Agreement or any plan forming part of any Body Corporate Agreement but the change must not materially prejudice the Buyer.

#### **4.7 Other changes**

The following changes may be made:

- (a) any change to the number of lots in the Scheme;
- (b) any change to the numbering, size, location or permitted use of any other lot in the Scheme or of any lot in the retail component of the Development;
- (c) any change to car parking arrangements for visitor car parking associated with the Lot or any other lot in the Scheme;
- (d) any change to the design or appearance of the Development which the Seller considers necessary or desirable because of market, economic, site, architectural, construction or other factors, conditions or requirements;
- (e) any change to the number of lots that may be created out of any volumetric subdivision of the Land; and
- (f) any change to the landscaping or Facilities to be constructed as part of the Development (or the rights of use of any facilities),

and the Buyer cannot Object to the matters set out in this clause.

#### **4.8 No Objection**

The Buyer must not Object to:

- (a) the proposed name of the Body Corporate or the Scheme being changed;
- (b) the existence of any access or other easement affecting the Common Property;
- (c) the existence or passage through the Development of any Utility Infrastructure or Utility Service;
- (d) the Seller causing the Body Corporate to have a general meeting or any other meeting;

- (e) any encroachment on the Common Property or the Lot or any encroachment by any improvements within the Scheme on to adjoining land;
- (f) the existence of any electrical sub-station or transformer on the Common Property and any associated easement affecting the Common Property;
- (g) the existence of any lease, licence or easement affecting the Common Property granted by or in favour of the Body Corporate;
- (h) the existence of any heritage place or site of cultural heritage significance adjacent to the Scheme;
- (i) the non-completion of any landscaping or Facilities comprised in the Development; or

#### **4.9 Dividing fences**

- (a) The Seller is not required to contribute to the cost of construction or repair of any dividing fence between the Lot and any adjoining land owned by the Seller.

### **5. Seller's Conditions**

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#### **5.1 Approvals**

In consideration of the Seller incurring and continuing to incur Liabilities and Costs in connection with the Development or part of it (including Costs of consultants and contractors in obtaining Approvals and performing design and other work), the Buyer agrees that if any Government Body:

- (a) refuses or fails to grant or revokes any Approval for the Land or the Development (including any amendment or change to an Approval or any Approval required to facilitate any volumetric subdivision of the Land);
- (b) refuses or fails to seal the Plan or endorse its consent on the CMS; or
- (c) imposes any conditions in relation to any Approval or in relation to the sealing or endorsement referred to in paragraph 5.1(b) which the Seller acting reasonably decides is unsatisfactory or is not willing to comply with,

the Seller may terminate this contract by written notice to the Buyer and in that case:

- (d) the Deposit must be refunded to the Buyer together with any interest earned on the investment of the Deposit; and
- (e) neither party will have any Claim against the other party.

#### **5.2 Pre-sales and finance**

In consideration of the Seller incurring and continuing to incur Liabilities and Costs in connection with the Development or part of it (including Costs of consultants and contractors in obtaining Approvals and performing design and other work), the Buyer agrees that if:

- (a) the Seller does not achieve sufficient pre-sales of lots in the Scheme:
  - (1) to make, in the reasonable opinion of the Seller, the stage of the Development incorporating the Scheme viable; or
  - (2) to apply for or obtain finance for the construction of the Building; or
- (b) any finance obtained by the Seller is not on terms satisfactory to the Seller acting reasonably the Seller may, by 5.00pm on the Pre-Sales Date, give written notice to the Buyer that the Contract is terminated and in that case:

- (i) the Deposit must be refunded to the Buyer together with any interest earned on the investment of the Deposit; and
  - (ii) neither party will have any Claim against the other party.
- (c) The Buyer acknowledges and agrees that this condition has been included for the benefit of the Seller and accordingly: -
- (i) The Seller may waive the benefit of this condition at any time; and
  - (ii) The Buyer will have no right to Object in relation to the Seller's failure to give notice of satisfaction or waiver of this condition by the Pre-Sales Date.

### 5.3 Scheme Date

- (a) If, at the Contract Date, the Scheme has not been established (by the recording of the CMS), this contract is conditional on:
- (i) the Plan being registered in the Land Registry; and
  - (ii) the CMS being recorded in the Land Registry, on or before the Scheme Date.
- (b) Subject to the provisions of this contract, the Seller will use reasonable endeavours to satisfy the condition in this clause 5.3 as soon as reasonably possible.
- (d) If the condition in this clause 5.3 is not satisfied on or before the Scheme Date (or the Seller has given written notice to the Buyer that in the Seller's reasonable opinion such condition is not likely to be satisfied by the Sunset Date or will not be able to be satisfied by the Sunset Date) the Seller may terminate this contract by written notice to the Buyer and in that case:
- (3) the Deposit must be refunded to the Buyer together with any interest earned on the investment of the Deposit; and
  - (4) neither party will have any Claim against the other party.

### 5.4 Seller's other termination rights

In consideration of the Seller incurring and continuing to incur Liabilities and Costs in connection with the Development (including Costs of consultants and contractors in obtaining Approvals and performing design and other work), the Buyer agrees that if:

- (a) where the Buyer is an individual, the Buyer becomes an insolvent under administration (as defined in the Corporations Act);
- (b) where the Buyer is a company, the Buyer becomes an externally administered body corporate under the Corporations Act, a controller (as defined in the Corporations Act) is appointed to the Buyer's property or is deemed to be or stating that it is unable to pay its debts when they fall due;
- (c) where the Buyer is a company, the directors fail or refuse to sign this contract as Guarantor;
- (d) the Buildings or the Lot is destroyed or substantially damaged before the Settlement Date; or
- (e) the builder constructing the Buildings becomes an externally administered body corporate under the Corporations Act or a controller (as defined in the Corporations Act) is appointed or an order is made for its winding up,

the Seller may terminate this contract by written notice to the Buyer and in that case:

- (i) where clause 5.4(a) or 5.4(b) applies, without affecting the Seller's other rights, the Deposit will be forfeited and paid to the Seller; or

- (ii) where clause 5.4(c), 5.4(d) or 5.4(e) applies, the Deposit will be refunded to the Buyer and neither party will have any Claim against the other party.

## **6. Buyer Acknowledgements**

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### **6.1 Acknowledgements**

The Buyer acknowledges and agrees that the Buyer entered into this contract only after:

- (b) the Buyer received and had an opportunity to consider the Disclosure Statement;
- (c) the Buyer was given an opportunity to negotiate the terms of this contract; and
- (d) the Buyer satisfied itself about:
  - (1) the Development including the nature of the Development and the properties within it offered for sale by the Seller;
  - (2) the terms and conditions of this contract; and
  - (3) the time frame for completion of the Development and any part of it.

### **6.2 Warranties and representations by Seller**

The Buyer acknowledges and agrees that, except as specifically provided otherwise in this contract, at no time:

- (a) has the Seller, or any person on the Seller's behalf, made or given; or
- (b) has the Buyer relied on,  
any representation, warranty, promise or forecast.

### **6.3 Reliance by Buyer**

The Buyer acknowledges and agrees that, except as specifically provided otherwise in this contract:

- (a) no statements or representations:
  - (1) have induced or influenced the Buyer to enter into this contract or to agree to any or all of its terms;
  - (2) have been relied on in any way by the Buyer as being accurate;
  - (3) have been warranted to the Buyer as being true; or
  - (4) have been taken into account by the Buyer as being important to the Buyer's position to enter into this contract or agree to any or all of its terms;
- (b) the Buyer does not rely on any information which may have been made available by or on behalf of the Seller in relation to the Development; and
- (c) any brochure, marketing material or model relating to the Development is indicative or illustrative only and must not be relied on by the Buyer.

### **6.4 Entire understanding**

This contract:

- (a) is the entire agreement and understanding between the parties about the subject

matter of this contract; and

- (b) supersedes any prior agreement, understanding and negotiations on anything connected with that subject matter.

## 6.5 Sale of other Lots

The Buyer acknowledges that the Lot forms part of a residential development, which the Seller will sell or lease to other persons and the Buyer waives all rights to make any objection, before or after Settlement, concerning the methods used by the Seller and its agents to sell or lease lots in the Scheme. Such methods may include the use of signs, the use of Common Property and the use of display units. The Seller must give reasonable consideration for the comfort and convenience of the Buyer in relation to the use of such methods to sell or lease lots in the Scheme.

## 6.6 Views

- (a) The Buyer acknowledges that sites adjoining or in the vicinity of the Land may be developed in the future, with the result that views from the Scheme (or from part of the Building) may be interrupted, impeded or interfered with.
- (b) The Buyer agrees that:
  - (1) the Seller does not warrant that any views represented or depicted on any marketing material will be maintained in the future; and
  - (2) the Buyer is not entitled to Object as a result of views from the Scheme (or any part of the Building) being interrupted, impeded or interfered with or otherwise not being available due to development on any land adjoining or in the vicinity of the Land.

## 7. Construction of Building

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### 7.1 Completion of building work

- (a) Subject to the provisions of this contract the Seller will use reasonable endeavours to cause the construction of the Buildings to be commenced as soon as reasonably possible (if, at the Contract Date, that has not occurred).
- (b) Subject to the provisions of this contract the Seller will use reasonable endeavours to cause the Buildings and the Lot to be constructed by a licensed builder substantially in accordance with the Council Development Approval, the Plans and Specifications and the Schedule of Features and Finishes.
- (c) The Buyer acknowledges that any dimensions, measurements or areas on the Plan are estimated only and final measurements or areas are subject to construction and a final survey.

### 7.2 Defects

- (a) Subject to **clause 7.2(c)**, any defects or other faults in the Lot or the Chattels notified in writing to the Seller by the Buyer before the end of the Defect Liability Period which are due to faulty materials or workmanship relating to the construction of the Building must, as soon as is practicable but no later than a reasonable time after the end of the Defect Liability Period, be rectified by the Seller at its cost. The Buyer's only remedy for failure on part of the Seller to perform its Obligations under this **clause 7.2(a)** is limited to damages for reasonable rectification costs.
- (b) Any dispute about whether the Seller is required to rectify any defect or fault or whether a defect or fault has been rectified will be determined by the Project Manager acting reasonably.
- (c) The Buyer acknowledges and agrees that certain materials and products used in the construction of the Lot and the Chattels may:

- (i) comprise natural products (such as stone, timber and the like);
  - (ii) exhibit imperfections or variations in the shade, colour, texture, surface, finish or markings that contain natural fissures, lines indentations or the like, and may fade or change colour over time;
  - (iii) expand, contract, settle or distort over time as a result of exposure to heat, cold, weather, or the like;
  - (iv) mark or stain if exposed to certain substances;
  - (v) be damaged or disfigured by impact or scratching or other means;
  - (vi) be subject to shade variations and manufacture batching (for example: in carpet, tiles and other finishes); and
  - (vii) be subject to normal maintenance due to fair wear and tear, and
  - (viii) accordingly the Buyer cannot Object to the matters set out in **clause 7.2(C)**
- (d) The Seller's Obligation to rectify any defects or faults under **clause 7.2(a)** is subject to the Buyer allowing the Seller suitable access to the Lot at all reasonable times.
- (e) Except as provided for in this **clause 7.2**, the Buyer must not Object if there are any defects in the Building, the Lot or the Chattels.

### 7.3 Buyer Must Settle

The Buyer may not refuse to:

- (a) settle this Contract; or
- (b) pay any part of the Purchase Price,

because of any defect in the Buildings, the Lot or the Facilities whether due to defective materials, workmanship or any other cause at all unless the defect means the Buyer is unable to occupy the Lot (as to which a certificate from the Seller's Project Manager shall be conclusive evidence).

### 7.4 Electrical Safety Switch and Smoke Alarm

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlet and a Compliant Smoke Alarm will be installed in the Lot by the Settlement Date.

### 7.5 Chattels

- (a) This sale includes the Chattels (if any) listed in the Schedule of Features and Finishes. Ownership of those Chattels will pass to the Buyer on the Settlement Date free from all encumbrances and adverse claims. Where any of the Chattels described in the Schedule of Features and Finishes are not available or are otherwise not obtained by the Seller for inclusion in the Lot, the Buyer shall not Object to, nor make any claims in respect of, the Seller including in the Lot such replacement chattels of a generally similar type of and of a standard not substantially less than those described in the Schedule of Features and Finishes.
- (b) The Seller hereby assigns (so far as it is able to do so) to the Buyer from Settlement, the benefit of any manufacturers' warranties given in favour of the Seller with respect to the Chattels. Any acts necessary to perfect the assignment shall be undertaken by the Buyer at the Buyer's cost and expense.
- (c) The Chattels are at the risk of the Seller until Settlement.
- (d) The Seller need not fix defects in Chattels that are sold with a manufacturer's warranty.

## 7.6 Features and Finishes

- (a) The Features and Finishes for the Lot are contained in Schedule 2 to the Disclosure Statement
- (b) The Seller will cause the finish of the Lot to be generally in accordance with the Features and Finishes. However, this is subject to **Clause 4.5(j)**, and subject to the availability of materials.

## 8. Rights until Settlement

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### 8.1 Risk

The Lot and the Chattels are at the Buyer's risk from the Settlement Date.

### 8.2 Access

Following a request by the Buyer, on a day and at a time acceptable to the Seller (acting reasonably), the Buyer accompanied by the Seller's representative may enter the Lot once to inspect the Lot before Settlement.

## 9. Body Corporate Matters

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### 9.1 Body Corporate Agreements

- (a) The Seller may procure the Body Corporate (either before or after Settlement) to enter into an agreement or deed with the Seller or another party including the following:
  - (i) the Administration Agreement;
  - (ii) the Caretaking Agreement and Letting Agreement;
  - (iii) an agreement to provide services in relation to the on-supply or administration of a Utility Service;
  - (iv) any lease, licence or other occupancy agreement relating to part of the Common Property or any body corporate asset or any lease or licence over any rooftop area of the Building;
  - (v) an agreement with an artist or craftsperson relating to any artworks (such as a painting, sculpture, ceramic work, mosaic, light display, facade pattern, print or drawing) forming part of the Scheme including the maintenance of any such artworks;
  - (vi) any other agreement that may be disclosed in the Disclosure Statement (including any agreement or deed referred to in any by-law of the CMS);
  - (vii) any agreement with a Government Body required under an Approval under which the Body Corporate agrees to indemnify the Government Body in relation to any damage that may be caused to the pavement or other driving surfaces of the Scheme;
  - (viii) any deed (including a deed under section 116 of the BCCM Act), agreement or arrangement that is desirable and necessary for the purpose of the proper functioning, operation and management of the Scheme or for the purpose of ensuring the proper functioning of the duties and powers of the Body Corporate and of the Committee; or
  - (ix) an agreement or deed in relation to the sharing of facilities with the body corporate for an adjacent or nearby community titles scheme or with the owner of an adjacent or nearby building.
- (b) The Seller may procure the Body Corporate to grant leases, licences or easements over the Common Property for the benefit of the Seller or for the benefit of a lot owner or any other person, and the Seller may procure the Body Corporate to enter into leases, licences or easements for the benefit of the Scheme or any owner of a lot in the Scheme or any other person.
- (c) The Seller is entitled to any money paid or other benefits, entitlements or rights if the Body Corporate

enters into any agreement referred to in **clause 9.1(a)(ii)** and the Buyer expressly consents to the Seller receiving any such money, benefits, entitlements or rights.

- (d) The Buyer agrees that the terms of the Body Corporate Agreements:
- (i) achieve a fair and reasonable balance between the interests of the parties; and
  - (ii) are appropriate for the Scheme;

and the powers to be exercised and functions to be performed by the resident caretaker, if any, are appropriate for the Scheme and do not adversely affect the Body Corporate's ability to carry out its functions.

## 9.2 Exclusive Use Areas

- (a) The Buyer acknowledges that the Lot will be allocated exclusive use of that part of the Common Property allocated to the Lot in Schedule E of the Community Management Statement and shown on the Exclusive Use plan attached to the Community Management Statement for the purposes described in the by-laws of the Community Management Statement ("the Exclusive Use Area").
- (b) The Buyer acknowledges that the Exclusive Use Area will not form part of the title of the Lot and is not part of the location, dimensions or area of the Lot as referred to in **Clause 4.5(a)**.
- (c) The Buyer agrees that:
- (i) Notwithstanding any location, dimensions or description of a carpark, storage area, courtyard area, balcony area or bicycle parking spaces which may be set out in any document forming part of the Disclosure Statement, such location, dimensions or description are not essential terms of this Contract;
  - (ii) the Seller may, in its complete discretion, make variations to any carpark, storage area, courtyard area, balcony area or bicycle parking space (or any of them) provided that the area is more or less similar in size to the area previously proposed to be allocated to the Lot
  - (iii) the Seller may, in its absolute discretion, determine and change the access arrangements as between the 'as built' Lot and any of the carpark and storage areas including by effecting a shuttle lift arrangement between the basement carpark areas and the entry foyer and the floor of the Building on which the Lot is situated.
- (d) The Buyer must not Object to the Seller exercising its discretion to make variations permitted under this **Clause 9.2**.
- (e) The Buyer acknowledges that the Seller has entered into this contract in reliance on the acknowledgments and agreements made by the Buyer in this **Clause 9.2**.

## 9.3 Power of Attorney

- (a) Each Person comprising the Buyer (jointly and severally if there is more than one Buyer) for a period of one year after the Scheme is established irrevocably appoints the Seller and each of the Sellers' directors, if applicable, severally, to be the Buyer's attorney to do all things that the Buyer may do relating to all meetings of the Body Corporate or the committee of the Body Corporate, including for the purposes set out in the Disclosure Statement; and
- (b) Each Person comprising the Buyer (jointly and severally if there is more than one Buyer) must not vote (or allow any person to vote for the Buyer) at a general meeting of the Body Corporate, or a committee meeting of the Body Corporate if the Buyer becomes a committee member, without the Seller's written consent.
- (c) To give effect to **Clause 9.3** the Buyer must, on or before the Settlement Date (or at anytime thereafter) if requested by the Seller, deliver to the Seller the form of power of attorney contained in the Disclosure Statement as duly executed by the Buyer. The Buyer irrevocably authorises the Seller to date and/or complete any blank spaces or variables in the power of attorney document. Furthermore should the Buyer fail to provide the executed power of attorney document to the Seller on or before the Settlement Date the Buyer irrevocably appoints the Seller to execute the power of attorney on its behalf.
- (d) The duration of the power of attorney contained in this **Clause 9.3** shall be the maximum period permissible

under the Act.

- (e) Each Person comprising the Buyer (jointly and severally if there is more than one Buyer) ratify and confirm and agree to ratify and confirm whatever the attorney appointed pursuant to **clause 9.3** does or causes to be done pursuant to the power of attorney granted pursuant to this **clause 9.3**.
- (f) While the power of attorney remains in force and effect:
  - (i) The Buyer will not sell, transfer or assign the Lot or the Buyer's interest in the Lot except to a purchaser, transferee or assignee who first covenants in favour of the Seller to observe this clause and grants to the Seller a power of attorney on terms identical to this **Clause 9.3**; and
  - (ii) The Buyer agrees to obtain a similar covenant as contained in **Clause 9.3** from any subsequent purchaser, transferee or assignee in favour of the Seller.
- (g) To better perfect **Clause 9.3(f)** the Buyer must have the purchaser, transferee or assignee enter into a deed with the Seller in which the purchaser, transferee or assignee:
  - (i) gives the Seller a power of attorney in the same terms and for the same purposes as **Clause 9.3**; and
  - (ii) undertakes to comply with the continuing obligations and restrictions on the Buyer under this Contract.
- (h) A deed of covenant under **Clause 9.3(g)** must be prepared by the Seller's solicitors at the Buyer's cost.
- (i) If the Seller exercises its rights under **Clause 24**, the Buyer agrees that the Seller may assign its rights to act as the Buyer's proxy.

#### **9.4 Proxy**

- (a) The Buyer must sign and deliver to the Seller on or before the Settlement Date (or at anytime thereafter) if requested by the Seller, the Proxy Form.
- (b) The Seller may exercise its rights as the Buyers proxy for voting on the following issues:
  - (i) Engaging a person as a body corporate manager, service contractor or letting agent;
  - (ii) Authorising a service contractor or letting agent to occupy a part of the Common Property; and
  - (iii) Consenting to the recording of a new Community Management Statement to include a by-law.
- (c) The proxy rights granted under this clause will be effective for the maximum period permissible under the Act. The Sellers right to act as the Buyer's proxy will be effective on and from the Settlement Date.
- (d) If the Buyer is a company, the Buyer must appoint a company nominee on the Settlement Date. The Buyer must ensure that the Buyer's nominee signs and completes the Proxy Form in favour of the Seller and delivers the completed and executed Proxy Form to the Seller immediately. The Seller may use the power of attorney granted by the Buyer under **Clause 12.3** to notify the Body Corporate of the appointment of the nominee.
- (e) The Buyer authorises the Seller to date, complete any blank spaces and appoint a named individual in the Proxy Form prior to or after the Buyer signs the Proxy Form.
- (f) While the proxy remains in force and effect:
  - (i) The Buyer will not sell, transfer or assign the Lot or the Buyer's interest in the Lot except to a purchaser, transferee or assignee who first covenants in favour of the Seller to observe this clause and grants to the Seller a proxy on terms identical to this **Clause 12.4**; and
  - (ii) The Buyer agrees to obtain a similar covenant as contained in **Clause 12.4(f)(i)** from any subsequent purchaser, transferee or assignee in favour of the Seller.
- (g) Failure to provide the proxy as required under this **Clause 12.4** is a default of this Contract by the

Buyer and the Buyer indemnifies and shall keep indemnified the Seller against any loss or damage which the Seller may sustain as a result of such failure by the Buyer.

- (h) While the proxy is in force in favour of the Seller or the Seller's nominee, the Buyer must not:
  - (i) Exercise a vote on a matter which the proxy seeks to vote on;
  - (ii) Revoke the proxy; or
  - (iii) Grant any other proxy to any other person or entity.
- (i) If the Seller exercises its rights under **Clause 24**, the Buyer agrees that the Seller may assign its rights to act as the Buyer's proxy.

## **9.5 Service Location Diagram**

- (a) The Buyer acknowledges that at the time of preparation of this Contract the Seller did not have sufficient information to prepare a services location diagram to include in Schedule D of the Community Management Statement.
- (b) The Buyer authorises the Seller to prepare a services location diagram following construction of the Building and to update the Community Management Statement by annexing the service location diagram and updating information with respect to any statutory easements that will affect the Lot prior to registration of the Community Management Statement.
- (c) The Buyer accepts that on Settlement the Community Management Statement will contain a services location diagram identifying the service easements for the Lot and Common Property for lots in the Scheme and may contain a plan identifying lots affected by statutory easements as may be disclosed in Schedule D of the Community Management Statement. The Buyer makes no Objection as a result of the material contained in the services location diagram of the Community Management Statement updated in accordance with this clause.

## **9.6 Community Management Statement**

- (a) The Seller must ensure that prior to Settlement the Community Management Statement recorded for the Scheme is generally substantially similar to the Community Management Statement contained in the Disclosure Statement, subject to changes allowed under this Contract.

## **9.7 Body Corporate Budget**

- (a) The Seller has estimated the costs to the owner of each lot in the Scheme in respect of the administration fund levy and sinking fund levy for the first year of the operation of the Body Corporate. That estimate is set out in the proposed budget contained in the Disclosure Statement. The Seller does not warrant that the proposed budget is accurate and is not liable to the Buyer if the Body Corporate adopts a budget different from that proposed by the Seller.

## **9.8 Facilities**

- (a) The Buyer acknowledges that the Facilities may be:
  - (i) located on Common Property for the Scheme;
  - (ii) the subject of allocations made by the Seller or subject to agreements in relation to the Facilities or encumbrances;
  - (iii) available for the use and benefit of owners as the Seller determines;
  - (iv) constructed progressively and not be operational at Settlement; and
  - (v) maintained by and at the cost of the Body Corporate for the Scheme (subject to the terms of any allocations or exclusive use by-laws in the Community Management Statement or terms of applicable agreements or encumbrances).
- (b) The Buyer must not make any claim for compensation or damages or refuse to perform or purport to

terminate this Contract because:

- (i) Facilities may be enjoyed by some owners or in conjunction with or to the exclusion of some or all other Owners;
  - (ii) an authorised allocation made by the Seller is made on conditions including that the relevant owner meet liabilities for the allocated area;
  - (iii) the Body Corporate for the Scheme is obliged to meet the costs (whether in whole or in part) of maintenance and repair of any Facilities;
  - (iv) Facilities not being operational or available at Settlement.
- (c) The Buyer releases the Seller from any claim arising out of or in connection with the matters referred to in clauses 9.8(a) or 9.8(b)

### 9.9 Insurance of Building and Common Property

- (a) The Seller must pay the premiums payable in respect of insurances effected by the Body Corporate pursuant to the Regulation Module and Section 191 of the Act covering the period of one year commencing on the date of registration of the Community Titles Scheme.
- (b) The first year's premium in respect of insurances referred to in **Clause 12(a)** shall be adjusted between the parties accordance with **Clause 3.5** and as follows:-

$$(A \div B \times C)$$

A is the amount of the premium paid by the Seller

B is the Aggregate Interest Schedule Lot Entitlement of all lots in the Plan in the Interest Schedule of the Community Management Statement

C is the Interest Schedule Lot Entitlement of the Lot in the Interest Schedule of the Community Management Statement

### 10. Variations to Development

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- 10.1 The Buyer acknowledges that the Seller has made disclosure to it about the Development in the Disclosure Statement.
- 10.2 The Seller is entitled to make Variations to the carrying out of the Development as determined by the Seller at 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 Development; and
  - (b) have a direct material adverse effect on the value of the Lot.
- 10.3 If there is a Variation to the Development which is not excused by the provisions of this Contract then the Buyer:-
- (a) Is not entitled to terminate or avoid this Contract; and
  - (b) is only entitled to claim compensation from the Seller.
- 10.4 Any such claim for compensation is only valid if the claim is lodged in writing with the Seller before the earlier of:-
- (a) Settlement; or
  - (b) the day 30 days after the seller gives notice to the Buyer that the Variation has been made or is intended to be made.

- 10.5 The measure of compensation will be the reduction in value (if any) of the Property occurring as a result of the Variation, such value to be determined by a valuer agreed between the Parties and failing agreement by a

valuer selected by the President for the time being of the Queensland Law Society (or their nominee) at the request of either of the Parties. The valuation provided by the Valuer appointed under this clause is final and binding on the Parties. The costs of the valuer must be paid equally by the Parties.

- 10.6 If there is a Variation which is so substantial as to entitle the Buyer to terminate or avoid the Contract, then the Buyer's only right is to terminate the Contract and recover the Deposit and any interest earned on the Deposit. The Buyer has no right to damages arising out of the termination or to require specific performance of this Contract.

## **11. Sunset Date**

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- 11.1 Settlement must occur by the Sunset Date. If settlement does not occur by the Sunset Date (or if the Buyer requests a later date for settlement and the Seller agrees to that date, that later date), then either the Seller or the Buyer can terminate the Contract by written notice to the other party and all moneys paid by the Buyer shall be refunded to the Buyer and neither party shall have any Claim against the other by reason of that termination.
- 11.2 The Buyer may not terminate the Contract under **clause 11.1** if settlement has not occurred by the Sunset Date as a result of the Buyer's default.

## **12. Marketing, Display Lots and Advertising**

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The Seller may use all reasonable methods to sell other lots in the Development including, without limitation:

- (a) the use of signs on the Land;
- (b) the use of Common Property;
- (c) opening of display units; and
- (d) people passing over the Common Property to and from any lots in the Scheme.

The Buyer cannot object to the exercise of the Seller's rights under this clause.

## **13. Seller not yet Registered Owner**

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- 13.1 The Buyer acknowledges and is aware that as at the date of the Contract the Seller may not be the registered owner of the Land.
- 13.2 If the Seller is not the registered owner of the Land as at the date of this Contract then this Contract is subject to and conditional upon the Seller becoming the registered owner of the Land prior to the Settlement Date.

## **14. Notice of Default to be given by the Buyer before Termination**

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- 14.1 This clause applies:
- (a) notwithstanding any other provision in this Contract;
  - (b) if the Seller is in default; and
  - (c) such default entitles the Buyer to terminate.
- 14.2 If this clause applies, the Buyer must not terminate or purport to terminate this Contract unless the Buyer has first given the Seller a notice which requires the Seller to remedy the default within a period of not less than 10 Business Days after the notice is given to the Seller. Only if the notice has been duly given, the 10 Business Day period has expired and the Seller has not remedied the default, is the Buyer entitled to terminate this Contract.

## 15. Subject to Finance Approval

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If the Buyer has selected 'yes' in relation to Finance Approval in the Reference Schedule of this Contract then the following provisions of this **Clause 15** will take effect otherwise **Clause 15 (c) to (g)** will not apply to this Contract.

- (c) This Contract is subject to and conditional upon the Buyer obtaining Finance Approval on terms satisfactory to the Buyer from a Bank or other financial institution in respect of the Lot within 21 days of the Contract Date ("Finance Due Date").
- (d) The Buyer must give written notice to the Seller by 5.00pm on the Finance Due Date that:-
  - (i) The Buyer has not obtained satisfactory Finance Approval in respect of the Lot in which case the contract will be at an end; or
  - (ii) The Buyer has obtained satisfactory Finance Approval in respect of the Lot in which case the contract will no longer be subject to this **Clause 15**.
- (e) The Seller may terminate the Contract by notice in writing to the Buyer if no notice is given under this clause by 5.00pm on the Finance Due Date. This is the Seller's only remedy for the Buyer's failure to give notice;
- (f) The Seller's right to terminate under this clause is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver under this clause.
- (g) This **Clause 15** has been inserted for the benefit of the Buyer and accordingly the Buyer may waive its rights under this **Clause 15** at any time.

## 16. Bank Guarantee

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- (a) Instead of paying the deposit required by **Clause 3.2** of this Contract if the Seller (in its absolute discretion) consents to the payment or substitution of the Deposit with a bank guarantee or deposit bond, the Buyer may lodge with the Seller's solicitor a bank guarantee or deposit bond which satisfies the requirements of this clause.
- (b) In order to satisfy the requirements of this clause, a bank guarantee or deposit bond must:-
  - (i) be issued by a bank licensed to trade in Australia, or another financial institution wholly acceptable to the Seller;
  - (ii) have a face value equal to the amount of the Deposit required to be paid;
  - (iii) be issued in favour of the Deposit Holder;
  - (iv) require the issuer of the instrument, upon demand by the Seller's solicitor, and without reference to the Buyer, to pay to the Deposit Holder the face value of the instrument;
  - (v) be unconditional, irrevocable and unlimited as to time (no expiry date).
- (c) The Seller's solicitor may call upon a bank guarantee or deposit bond lodged pursuant to this clause if and only if:-
  - (i) this Contract has been terminated for default on the part of the Buyer and the Seller has declared the Deposit forfeited; or
  - (ii) the Buyer has (notwithstanding the requirements of **Clause 16(b)**) delivered a bank guarantee or deposit bond which is limited by time and the Buyer has failed (despite a request by the Seller's solicitor) to replace the bank guarantee or deposit bond with either a cash deposit or a further bank guarantee or deposit bond at least twenty-one (21) days prior to the due date for

expiry.

- (d) If the Seller's solicitor calls upon the bank guarantee or deposit bond in accordance with this **Clause 16**, the proceeds received must be paid promptly to the Deposit Holder and dealt with in accordance with the terms of the *Land Sales Act 1984* and this Contract.
- (e) If the Seller calls upon a bank guarantee or deposit bond in accordance with this **Clause 16** the Buyer indemnifies the Seller (and the Buyer will keep the Seller indemnified) for any and all costs, damages or loss the Seller suffers in relation to converting the bank guarantee or deposit bond to cash including without limitation legal costs on a full indemnity basis for any legal action taken by the Seller.
- (f) On Settlement, If the Buyer has provided a Bank Guarantee instead of paying the Deposit (or any part thereof) the Buyer must pay the Deposit (or any outstanding part thereof) to the Seller and in exchange the Deposit Holder will return the Bank Guarantee to the Buyer.

## 17. Goods and Services Tax

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- (a) **Apply Margin Scheme.** The Buyer acknowledges that the Seller will apply the Margin Scheme to the Taxable Supply made under this Contract. The Buyer and Seller agree that the Margin Scheme will be applied to calculate the Seller's GST liability on the supply made under this Contract.
- (b) **Payment of GST.** The parties agree that:
  - (i) the Purchase Price is inclusive of GST but any other Payments have been calculated without regard to GST;
  - (ii) if the whole or any part of any Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
  - (iii) any reference to a cost or expense in this Contract excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit;
  - (iv) the payer will pay to the payee on demand any interest, penalties, fines or other charges to the extent that they arise from the payer's failure to make a Payment when due under this contract;
  - (v) this clause will not merge on completion.
- (c) **Definitions and Interpretation:** For the purpose of this clause:
  - (i) Capitalised expressions which are not defined in this clause but which have a defined meaning in the GST Law have the same meaning in this Contract;
  - (ii) In this Contract:

**GST** means the goods and services tax as imposed by the GST Law.

**GST Amount** any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (current 10%).

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, of, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Payment** means any amount payable under or in connection with this Contract (other than Purchase Price) including any amount payable by way of indemnity, reimbursement or otherwise and includes the provisions of any non-monetary consideration.

## 18. Buyer a Company/Trustee

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- (a) If the Buyer is a company or trustee then this Contract is not binding on the Seller until the Buyer's performance has been guaranteed by two persons of financial substance satisfactory to the Seller, such guarantee to be by execution of the form of guarantee attached to this Contract as **Schedule 2**.
- (b) If the Buyer is described in the Reference Schedule as being trustee of a trust, then the Buyer warrants to the Seller that:-
  - (i) it is the sole trustee of the trust;
  - (ii) it possesses unqualified power under the trust to enter into this Contract and complete the purchase of the Lot;
  - (iii) it has obtained any consent or approval and passed any resolution necessary to enable it to enter and discharge its obligations under this Contract;
  - (iv) it holds its interest under this Contract in the proper exercise of its powers under the trust;
  - (v) it enters into this Contract for the sole benefit of the beneficiaries of the trust;
  - (vi) it has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability undertaken pursuant to this Contract;
  - (vii) it will, upon request, deliver to the Seller certified true copies of all constituent documents of the trust.
  - (viii) nothing referred to in **Clause 18 (c)** occurred prior to entering into this Contract except as disclosed in writing to the Seller.
- (c) The Buyer must ensure that between the day of this Contract and the final discharge of its obligations under this Contract none of the following events occur without the Seller's written consent (the Seller's consent will not be unreasonably withheld):
  - (i) amendment or revocation of the trust;
  - (ii) its removal or retirement as trustee of the trust;
  - (iii) appointment of a new or additional trustee to the trust;
  - (iv) use of the trust assets for a beneficiary's or objects own purposes, unless in accordance with the terms of the trust;
  - (v) distribution, resettlement or transfer of trust assets;
  - (vi) anything that might result in the Buyer entitlement to indemnify from the trust assets or the beneficiaries being diminished;
  - (vii) acceleration of the vesting date or termination of the trust; or
  - (viii) The Buyer, as trustee, incurring a debt, lending money, giving a guarantee or indemnity, encumbering a trust asset, mixing trust assets, compromising a claim in relation to any trust asset, parting with possession of a trust asset, delegating any of the trustee's powers, or increasing its trustee remuneration, other than in proper exercise of its duties under the trust.

## 19. Privacy

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### 19.1 The Buyer consents to:-

- (a) the collection of the Personal Information;
- (b) the use and disclosure by the Seller of the Personal Information for the purposes of enabling the Seller

to comply with its obligations under, associated with and arising in connection with this Contract, including any obligations to any third parties, such as the Seller's financier;

- (c) the disclosure to, and use by, third party contractors and service providers engaged by the Seller of the Personal Information for the purpose of:-
  - (i) enabling the Seller to comply with and fulfill its obligations under or arising pursuant to or in connection with this Contract; and
  - (ii) procuring the provision to the Buyer of the products and services contemplated by this Contract; and
  - (iii) providing the Buyer with information relating to future activities of the Seller; and
  - (iv) undertaking research in connection with this Contract and any future activities of the Seller.
- (d) the disclosure of Personal Information to relating companies and other organizations with which the Seller is affiliated which may use and disclose Personal Information for marketing purposes;
- (e) the disclosure of Personal Information to other third parties including professional advisers, printing houses, insurers and marketing agents;
- (f) the use and disclosure by the Seller of the Personal Information for the purposes of enabling the Seller to enforce its rights under this Contract; and

#### 19.2 The Buyer acknowledges that:-

- (a) the Personal Information is held by the Seller subject to the requirements of the Privacy Act;
- (b) in accordance with the requirements of the Privacy Act, the Buyer may request access to the Personal Information and request that it be corrected at any time;
- (c) the Buyer may request access to the Personal Information or request that it be corrected by contacting the Privacy Officer.

## 20. Letting Agreement

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- (a) In the event that the Buyer elects to not reside in the Lot and wishes to let or lease the Lot to a third party the Buyer may appoint the Letting Agent to perform the letting, leasing and property management services for the Lot on behalf of the Buyer.
- (b) If the Buyer has indicated that its purposes for the Lot shall be an investment, as referred to in the Reference Schedule, the Letting Agent shall send or cause to be sent to the Buyer a Property Occupations Act Form 6 Appointment of Agent – Letting and Property Management (or such other form as may be required by law) containing the terms and conditions and services usually or commonly offered by an agent for a property similar to the Lot ("Appointment Form").
- (c) The Seller confirms that the commission payable to the Letting Agent included in the Appointment Form shall not exceed the maximum amount set by *the Property Occupations Regulation* or other relevant Regulation as in force from time to time for the letting and collection of rent on residential properties.
- (d) If the Buyer wishes to appoint the Letting Agent the Buyer must within fourteen (14) days of receipt of the Appointment Form but in any event no later than fourteen (14) days prior to the Settlement Date, return to the Letting Agent named in the Appointment Form, or the Seller, the duly completed and executed original Appointment Form.
- (e) If the Buyer has the duly completed and executed original Appointment Form under **clause 20(d)**, and where the Seller or nominated party by the Seller secures a tenant for the Lot prior to the Settlement Date, then the Buyer takes the Lot subject to such tenancy.
- (f) Nothing in this clause 20 shall obligate the Buyer to appoint the Letting Agent.

## 21. Statutory Notices

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- 21.1 The Buyer acknowledges that prior to executing this Contract they have received from the Seller and/or the Seller's Agent duly executed the following:
- (a) a Disclosure Statement complying with the provisions of Section 213 of the Act;
  - (b) the Disclosure Plan required by Section 213AA of the Act;
  - (c) a Statement in relation to the Power of Attorney set out in **Clause 9.3**; and
  - (d) any statement, directions or disclosures required to be given to the Buyer under the *Property Occupations Act 2014 (Qld)*.
- 21.2 The Buyer is deemed to have read the Disclosure Statement and this Contract before it signed the Contract and any information disclosed in the Disclosure Statement and this Contract is deemed to be disclosed to the Buyer before the Buyer enters into this Contract.
- 21.3 The Buyer and Seller agree that the Disclosure Statement and Disclosure Plan are substantially complete and the Buyer is not materially prejudiced by:
- (a) No title references or survey plan numbers being included in documents proposed to be lodged with DNRM including the Community Management Statement;
  - (b) No services location diagram being included in any proposed Community Management Statement;
  - (c) No specific car parks, courtyards or storage spaces being specified in Schedule E of the proposed Community Management Statement;
  - (d) No specific car park allocation or plan being prepared/ included in the Contract or the Disclosure Statement;
  - (e) No proposed or possible service agreements with utility providers/ installers/ service providers being included; and
  - (f) No names and addresses being included in any caretaking agreement or letting agreement.

## 22. Settlement Date, Place and Time

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### 22.1 **Settlement Date:**

- (a) If the Plan is not registered as at the date of this Contract the Settlement Date is the later of:
  - (i) the day which is fourteen (14) days after the day on which the Seller notifies the Buyer that the Community Titles Scheme has been established and that an indefeasible title for the Lot has been created; or
  - (ii) the day which is fourteen (14) days from the date of finance approval.

In any event settlement must not take place earlier than fourteen (14) days after the Seller gives advice to the Buyer that the Scheme has been established.
- (b) If the Plan is registered as at the date of this Contract the Settlement Date will be the date that is thirty (30) days from the Contract Date.
- (c) 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 ninety (90) days. If this happens, time remains of the essence notwithstanding the extension. The Seller may only extend the Settlement Date under Clause 22(c) for bona fide reasons including, for example, to: -

- (i) provide or deliver separate indefeasible title to the Property at Settlement; and
  - (ii) provide the necessary document releasing an Encumbrance which is required to be provided to the Buyer at Settlement.
- (d) Settlement of this Contract must take place no later than the Sunset Date.

22.2 **Settlement Place:** Settlement must be at the place in Brisbane notified by the Seller to the Buyer. Failing notification then:

- (a) if there is a mortgage on the Lot, at the Brisbane office of the first mortgagee; or
- (b) if there is not a mortgage on the Lot, at the Brisbane office of the Seller's solicitors.

22.3 **Settlement Time:** Settlement must occur no later than 4.00pm on the Settlement Date. The parties may agree to settle at an earlier time on the Settlement Date, but time is not of the essence in relation to any time so agreed.

#### 22.4 Transfer Documents

- (a) The Transfer Documents must be prepared by the Buyer's Solicitor and provided to the Seller's Solicitor a reasonable time prior to the Settlement Date.
- (b) The Buyer acknowledges that the Transfer will be executed by the Seller under power of attorney. Accordingly the Buyer cannot Object to the Seller making use of a Form 20 Enlarged Panel to facilitate the execution of the Transfer under power of attorney.

#### 22.5 Documents and Keys

- (a) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at Settlement:
  - (i) any instrument of title for the Lot required to register the transfer to the Buyer;
  - (ii) subject to **clause 22.5(b)**, the Keys in the Seller's possession or control for all locks and security systems on the Lot; and
  - (iii) subject to **clause 22.5(c)**, unstamped Transfer Documents capable of immediate registration after stamping.
- (b) The Seller may make the Keys available for collection by the Buyer from the Agent or from another person at a location within the Scheme nominated by the Seller and this will constitute delivery of the Keys to the Buyer.
- (c) If, on Settlement, the Lot is subject to any registered mortgage or a security interest that is registered on the Personal Properties Securities Register that relates to the Lot, the Buyer must accept, on Settlement a signed release or partial release of the Lot from such mortgage or security interest together with any necessary duty declaration to procure the stamping of that release if it must be stamped. Except as stated in this **clause 22.5(c)**, the Seller is not required to provide a release of any security interest at Settlement.
- (d) Immediately after Settlement, the Buyer must give the necessary notice to the Body Corporate that the Buyer has become the owner of the Lot.

#### 22.6 Possession of Property and title to include Chattels

- (a) On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give to the Buyer vacant possession of the Lot.
- (b) Title to the Chattels passes to the Buyer at Settlement.

## 23. Other Dealings

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### 23.1 Mortgages and dealings

- (a) The Seller may:
  - (i) mortgage or charge its interest in the Land or the Lot (or any part of its interest);
  - (ii) obtain further advances on the security of the Land or the Lot; and
  - (iii) enter into joint ventures or other agreements in connection with the Development.
- (b) The Buyer consents to the Seller doing any of the things mentioned in clause 23.1(a) including for the purpose of any consent required under the Property Law Act if this contract is an instalment contract.

### 23.2 Seller's right to sell the Land

- (a) Subject to the Seller complying with clause 23.2(b)(1):
  - (1) at any time before Settlement, the Seller may transfer or assign its interest in the Land or the Lot (or any part of its interest) to any person (**Dealing**); and
  - (2) the Buyer consents to any Dealing, including for the purpose of any consent required under the Property Law Act if this contract is an instalment contract.
- (b) If the Seller proposes to effect a Dealing:
  - (1) the Seller must procure the Third Party to execute a Novation Deed before the Dealing is completed;
  - (2) the Buyer and any Guarantor must, on request by the Seller, execute the Novation Deed; and
  - (3) the Buyer must, on request by the Seller or Third Party, waive any cooling off period applicable as a result of the Dealing.
- (c) On completion of a Dealing, the Seller may:
  - (1) transfer or assign the Deposit or any Security Deposit (where it is assignable) to the Third Party's nominated deposit holder (and the Seller and the Buyer irrevocably authorise the Deposit Holder to facilitate such transfer or assignment); or
  - (2) where any Security Deposit is not assignable, require the Buyer to provide to the Third Party's nominated deposit holder a replacement Security Deposit within ten Business Days of the Seller asking for it and, once provided, the Security Deposit will be returned.
- (d) In this clause:

**Dealing** has the meaning given in clause 23.2(a)(1).

**Novation Deed** means a deed (in a form reasonably required by the Seller) to be made between the Seller, the Buyer, the Guarantor (if any) and the Third Party in relation to a Dealing and under which, on and from completion of the Dealing:

- (1) the Third Party agrees in favour of the Buyer to be bound by the Obligations of the Seller under this contract;
- (2) the Buyer releases the Seller from its Obligations under this contract; and

- (3) the Buyer and the Guarantor agree to perform their respective Obligations under this contract in favour of the Third Party.

**Third Party** means the person in whose favour the Seller effects a Dealing.

### 23.3 Assignment or sale by Buyer

- (a) The Buyer acknowledges that due to the scale of the Development, it is possible that the Seller will not have sold all of the lots in the Scheme prior to Settlement and will be continuing to sell any remaining lots following Settlement.
- (b) Prior to Settlement, the Buyer must not transfer, sell or assign its interest in this contract or transfer or sell the Lot without the consent of the Seller, which consent if granted may be subject to conditions reasonably required by the Seller.
- (c) Following Settlement, the Buyer must not sell or transfer the Lot to another party under a separate contract until the expiry of 12 months after Settlement or earlier if agreed by the Seller, without the consent of the Seller, which consent if granted may be subject to conditions reasonably required by the Seller.
- (d) The Buyer must indemnify the Seller and keep the Seller indemnified against any loss or expense incurred by the Seller as a result of the Buyer's breach of this clause 17.3.

### 23.4 Caveats and settlement notice

- (a) The Buyer or any agent or other person on behalf of the Buyer must not lodge a caveat affecting the Land or the Lot.
- (b) The Buyer irrevocably appoints the Seller and the Officers of the Seller and their substitutes, jointly and severally, to be the attorney of the Buyer for the purpose of signing any document (including withdrawal of caveat) and doing anything in order to procure the release or withdrawal of any caveat lodged by or on behalf of the Buyer. The Buyer acknowledges that this power of attorney is given to secure Obligations owed by the Buyer to the Seller and that the power of attorney may be exercised by the Seller despite any conflict of interest.
- (c) The Buyer may lodge a settlement notice but only when the Lot comes into existence after the Scheme is established.

## 24. Death or Insolvency of Buyer

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If before completion of this Contract:

- (a) the Buyer being a natural person:
- (i) Dies;
  - (ii) Becomes Bankrupt or enters into a scheme of arrangement, composition or assignment with or in favour of its creditors;
  - (iii) in the opinion of the Seller (acting reasonably), is unable to pay its debts;
  - (iii) is sentenced to imprisonment for a term exceeding one (1) month;
  - (iv) is committed to a psychiatric hospital as defined in *The Mental Health Services Act 1974*;
- (b) the Buyer being a Company:
- (i) is subject to an application for its winding up;
  - (ii) is ordered to be wound up, or is placed in provisional liquidation;

- (iii) enters into a scheme or arrangement for the benefit of its creditors;
- (iv) resolves to go into liquidation; or
- (v) is put into the control of a receiver, receiver and manager, official manager or administrator.

the Seller may terminate the Contract by notice. The Seller must refund all money paid under the Contract and no party will have any claim against the other. For the purposes of this clause **Buyer** includes any of the persons that comprise the Buyer.

## 25. Instalment Contracts

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25.1 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.

25.2 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 mortgaging and or charging the Lot on terms and conditions the Seller in its total discretion determines.

25.3 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 20% 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 20% of the Price as deposit, the Buyer is entitled to a refund of the amount in excess of 20% upon request to the Seller. If the Seller refunds an amount paid in excess of the 20% deposit, the Buyer will still be required to pay the Price less any cash deposit paid at Settlement.

25.4 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.

25.5 The provisions of **clause 25.3** are mandatory overriding provisions and override any other provision of this Contract including any Special Conditions. The Buyer is not bound to make payment or payments of amounts which total in excess of 20% of the Price without being entitled to receive a conveyance in exchange for the payment or payments.

## 26. Managed Investments

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"**Letting Agent**" means the letting agent who been appointed, or will be appointed, as the letting agent for the Scheme pursuant to the Letting Agreement

"**RG140**" means the ASIC Regulatory Guide issued 13 November 2000 in regard to serviced strata schemes as amended from time to time

26.1 The Buyer expressly acknowledges that:-

- (a) RG140 represents ASIC's interpretation of the application of the managed investment provisions contained in Chapter 5c of the Corporations Act 2001 ("Corporations Act");
- (b) For a serviced strata scheme 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 Scheme;
- (d) There is no obligation on the buyer of an apartment to make their apartment available to the Seller or Letting Agent for letting to prospective tenants;
- (e) Should the Buyer elect to make the apartment available to the Letting Agent for letting of prospective tenants:
  - (i) any tenant will most likely be a long term tenant of six to twelve months duration;
  - (ii) there will be no pooling of rentals received or common enterprise with other lot owners in the Scheme; and
  - (iii) there is no understanding between or amongst buyers of apartments and the Seller or Letting Agent that apartments be 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 the right to select an apartment and may have a preference for a particular apartment.

26.2 In reliance on this acknowledgments contained in **clause 26.1**, the Seller enters into this Contract and will obtain funding for the Development on this basis; and

26.3 The Buyer will do all things necessary to confirm the Lot is not operated as part of a managed investment scheme and indemnifies the Seller in respect of all Claims to the contrary.

## **27. Intentionally Deleted.**

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## **28. Staged Development**

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28.1 The Seller discloses to the Buyer that the Seller intends to develop the Land as a staged development.

28.2 Such staged development may involve registering community management statements and plans for part only of the proposed lots contained in the plans for the proposed Lot such that at Settlement not all the proposed lots may be registered and available for occupation.

28.3 The Buyer covenants and agrees with the Seller as follows:

- (a) that there is no obligation upon the Seller to develop the Land in stages or in any number of stages;
- (b) that any further development may not necessarily take the form of the development referred to in the Plans and is therefore subject to change;
- (c) that in the event of the Seller or any successor in title proceeding with any development they may proceed by way of a staged method of development or otherwise;
- (d) that the plan, proposed community management statement and body corporate may differ from that contained in this Contract to enable registration of the development in stages; and
- (e) the Seller may make any changes to any agreement, document or community management statement to ensure that if the Land is developed in stages, the lot will be created regardless

28.4 The Buyer acknowledges that the plans comprise a development plan of the whole development that may be implemented by the Seller in its sole discretion.

28.5 The Buyer shall make no claim against the Seller by reason of the Seller or any successor in title proceeding or not proceeding with any part of the staged development.

28.6 The Seller and any of its authorised representatives may at any time enter onto the Land to undertake works of any kind necessary or incidental to the development proposed by the Seller including:

- (a) carrying out all necessary excavation, general earth works and construction works;
- (b) installing, repairing, stopping, maintaining and adjusting any services to the Land; and
- (c) Install, maintain and inspect any utility infrastructure and utility services.

28.7 The Seller covenants and agrees with the Buyer that it shall only exercise the rights granted to it under this Clause 28 for the purposes of completing the development proposed by the Seller.

28.8 The Buyer shall if required by the Seller do all necessary acts and things required by the Seller to assist in completion of the development proposed by the Seller.

28.9 If the Buyer shall at any time transfer, assign or dispose of its interest in the proposed Lot to any other party it will obtain a covenant satisfactory to the Seller binding such transferee to abide by the obligations contained in this Clause 40 and Contract and binding all subsequent transferees and assignees. The Buyer and any transferees shall be released from its obligations under this Clause 28 upon completion of any proposed developments.

## 29. Foreign Interests

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### 29.1 Relevant definitions

In this clause 29, in addition to other defined terms:

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

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

**FIRB Approval** has the meaning given in paragraph 29.3(b)(1).

**FIRB Approval Date** means the date which is 30 days from the Contract Date.

**FIRB Pre-Approval** means any approval the Seller has obtained from FIRB to permit the sale of lots in the Scheme to Non Australian Residents.

**Non Australian Resident** means a foreign person within the meaning of section 21A of FAT Act or a person to whom section 26A of the FAT Act applies.

### 29.2 Warranty

The Buyer warrants that the statement in the Reference Schedule as to whether the Buyer is a Non Australian Resident is accurate.

### 29.3 FIRB approval – Buyer application

- (a) If the Buyer has indicated in the Reference Schedule that the Buyer is a Non Australian Resident, this clause 29.3 applies unless the Seller has obtained the FIRB Pre-Approval. If at the Contract Date, the Seller has obtained FIRB Pre-Approval, the Seller agrees to notify the Buyer to that effect as soon as practicable after the Contract Date.
- (b) This contract is conditional upon the occurrence of the following on or before the FIRB Approval Date:
  - (1) FIRB providing a written statement that it has no objection to (or approves) the Buyer's purchase of the Property with or without conditions (**FIRB Approval**); or
  - (2) the expiry of any relevant period under which FIRB must make a decision without any order of prohibition being made under the FAT Act.

- (c) Subject to the other provisions of this **clause 29.3**, the Buyer must:
- (1) make application for the FIRB Approval within 7 days after the Contract Date;
  - (2) in making the application, ensure that all documents and forms required by FIRB are duly completed and signed (including any notice or declaration under section 26A of the FAT Act) and that the Buyer has included copies of any other documents and all other information required by FIRB to make a decision on the application deliver to the Seller a copy of the Buyer's application immediately after it has been made and in any event no later than 1 business day after the making of the application;
  - (3) diligently prosecute and pursue the application; and
  - (4) provide to the Seller as soon as is practicable copies of any correspondence or other written communication or notice from FIRB and otherwise keep the Seller informed as to the progress of the application when requested by the Seller.
- (d) If the Seller elects to do so, the Seller may make the application for the FIRB Approval on behalf of the Buyer and in that case:
- (1) the Buyer must fully cooperate with the Seller in the making of the application and provide all information necessary to enable the Seller to prepare and lodge the application (including signing the application if necessary; and
  - (2) the Buyer authorises the Seller to sign the application on behalf of the Buyer.
- (e) Subject to clause 29.3(f), if the condition in **clause 29.3(b)** is not satisfied on or before 5.00pm on the FIRB Approval Date, the Buyer or the Seller may by written notice to the other party terminate this contract and in that case:
- (1) the Deposit must be refunded to the Buyer together with any interest earned on the investment of the Deposit; and
  - (2) neither party will have any Claim against the other party.
- (f) Where either the Buyer or the Seller do not exercise the right to terminate this contract under clause **29.3(e)** within 2 business days following the FIRB Approval Date, the Buyer will be deemed to have warranted to the Seller that it has obtained the FIRB Approval and the condition in **clause 29.3(b)** will no longer apply.

## 30. Essential Terms

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### 30.1 Buyer's Obligations

The following Obligations of the Buyer are Essential Terms of this contract:

- (a) to pay the Deposit under clause 3.2(a);
- (b) to pay the Balance Purchase Price under clause 3.4;
- (c) to effect Settlement as required under clause 22;
- (d) to provide the power of attorney deed under clause 9.3 or obtain a deed of covenant in relation to the power of attorney under clause 9.7; and
- (e) to obtain an agreement to provide a proxy appointment under clause 10.

### 30.2 Seller's Obligations

The following Obligations of the Seller are Essential Terms of this contract:

- (a) to effect Settlement as required under clause 22;
- (b) to deliver to the Buyer the things referred to in clause 22.5; and
- (c) to give vacant possession of the Lot in accordance with clause 22.6.

### **30.3 Time is of the essence**

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 of this contract.

## **31. Buyer's default**

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### **31.1 Seller may affirm or terminate**

Without affecting the Seller's rights including those under this contract or the general law, if the Buyer:

- (a) fails to comply with an Essential Term; or
- (b) repudiates its Obligations under this contract, the Seller may affirm or terminate this contract.

### **31.2 If Seller affirms**

If the Seller affirms this contract under **clause 31.1**, it may sue the Buyer for:

- (a) damages;
- (b) specific performance; or
- (c) damages and specific performance.

### **31.3 If Seller terminates**

If the Seller terminates this contract under **clause 31.1**, it may do all or any of the following:

- (a) resume possession of the Lot;
- (b) forfeit the Deposit and interest earned on its investment;
- (c) sue the Buyer for damages; and
- (d) resell the Lot.

### **31.4 Resale**

- (a) If the Seller terminates this contract and re-sells the Lot, the Seller may recover from the Buyer as liquidated damages:
  - (i) any deficiency in price on a resale; and
  - (ii) its Costs connected with any repossession, any failed attempt to resell, and the resale, provided the resale settles within three years of termination of this contract.
- (b) Any profit on a resale belongs to the Seller.

### **31.5 Seller's damages and GST**

- (a) The Seller may make a Claim for any loss it suffers as a result of the Buyer's default, including interest and holding charges incurred by the Seller and its reasonable legal costs.

- (b) If the Deposit is forfeited to the Seller and the Seller must pay GST in respect of the forfeited Deposit then, despite anything else in this contract, the Buyer must pay on demand to the Seller, the amount of that GST.

### **31.6 Interest on late payments**

- (a) Without affecting the Seller's other rights under this contract, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at Settlement interest calculated at the Default Interest Rate on the whole of the Purchase Price from the due date for payment until payment is made.
- (b) The Seller may recover that interest from the Buyer as liquidated damages.
- (c) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this **Clause 31.6** apply to the calculation of that interest.

## **32. Seller's Default**

---

### **32.1 Buyer may affirm or terminate**

Without affecting the Buyer's rights including those under this contract or the general law, if the Seller:

- (a) fails to comply with an Essential Term; or
- (b) repudiates its Obligations under this contract,

the Buyer may affirm or terminate this contract.

### **32.2 If Buyer affirms**

If the Buyer affirms this contract under **Clause 32.1** it may sue the Seller for:

- (a) damages;
- (b) specific performance; or
- (c) damages and specific performance.

### **32.3 If Buyer terminates**

If the Buyer terminates this contract under **Clause 32.1**, it may do all or any of the following:

- (a) recover the Deposit and any interest earned on its investment; and
- (b) sue the Seller for damages.

### **32.4 Buyer's damages**

The Buyer may make a Claim for any loss it suffers as a result of the Seller's default, including its reasonable legal costs.

### 33. Notices

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#### 33.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in **clause 33.4** of this contract or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

#### 33.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;
- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by facsimile to the party's current numbers for service; or
- (e) sent by electronic mail to the party's electronic mail address.

#### 33.3 Time

If a notice is sent or delivered in the manner provided in **clause 33.2** it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (i) in Australia to an Australian address the second Business Day after posting; or
  - (ii) in any other case on the 10th Business Day after posting;
- (c) facsimile, when a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile number; or
- (d) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

#### 33.4 Initial details

The addresses and numbers for service are initially:

- (a) for the Seller, those set out in the Seller's Address in the Reference Schedule;
- (b) for the Buyer, those set out in the Buyer's Address in the Reference Schedule; and
- (c) for the Guarantor, those set out in the Guarantor's Address in the Reference Schedule.

#### 33.5 Authority

By signing this contract (whether or not this contract has been signed by the Seller), the Buyer appoints the Buyer's Solicitor as its agent to receive or communicate acceptance of any offer and to receive any notices and directions given or to be given by the Seller or its agent under this contract.

### **33.6 Changes**

A party may from time to time change its address or numbers for service by notice to each other party

## **34. Governing Law & Jurisdiction**

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### **34.1 Governing law**

This contract is governed by and construed in accordance with the laws of Queensland.

### **34.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 34.2(a)**.

## **35. Miscellaneous**

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### **35.1 Costs, duty and registration fees**

- (a) Each party is responsible for all its own costs incurred in the negotiation of, and the performance of, this contract including legal costs.
- (b) The Buyer must pay all transfer or other duty on this contract (or any transaction contemplated under it), and on the guarantee and indemnity in this contract and must pay any registration fees relating to the transfer of the Lot to the Buyer. The Buyer must indemnify and keep the Seller indemnified in respect of all such transfer or other duty and registration fees.

### **35.2 Rights after Settlement**

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

### **35.3 Exercise rights**

A single or partial exercise or waiver by a party of any right under or relating to this contract will not prevent any other exercise of that right or the exercise of any other right.

### **35.4 Merger**

If the liability of a party to pay money under this contract becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this contract and that fixed by or payable under that deed, judgment, order or other thing.

### **35.5 Moratorium legislation**

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this contract is excluded to the extent permitted by law.

### **35.6 Remedies cumulative**

The rights and remedies under this contract are cumulative and not exclusive of any rights or remedies provided by law.

### **35.7 Severability**

If anything in this contract is or is determined to be unenforceable, illegal, voidable or void then it is severed and the rest of this contract remains in full force and effect.

### **35.8 Further assurance**

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this contract and the transactions contemplated by it.

### **35.9 Variation**

An amendment or variation to this contract is not effective unless it is in writing.

### **35.10 Waiver**

- (a) A party's waiver of a right under or relating to this contract, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

### **35.11 Deed**

- (a) Each party to this contract:
  - (i) acknowledges that this is a sealed instrument and will have the effect of a deed; and
  - (ii) unconditionally signs, seals and delivers this contract so that the party has an intention to be immediately legally bound by this contract.
- (b) If, for any reason, this contract is not executed as a deed then this contract will take effect as an agreement between the parties and will bind the parties as an agreement

### **35.12 Buyer's Obligation to Disclose Rebates**

- (a) If the Buyer receives or takes from the Seller the benefit of any form of rebate of the portion of the Purchase 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.
- (b) 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.

### **35.13 Electronic Transactions (QLD) Act 2001**

For the purposes of sections 11 and 12 of the *Electronic Transactions (QLD) Act 2001* the Buyer and the Seller consent to information being given by electronic communication.

## 36. GST Withholding

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### 36.1 Relevant definitions

In this clause 36, in addition to other defined terms:

“**GST Notifications**” means each of the notifications in the approved form required to be given by the Buyer under section 16-150(2) of the Withholding Law.

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

“**Withholding Notice**” means the notice required by and compliant with section 14-255 of the Withholding Law

### 36.2 Withholding Law meanings apply

Words or expressions that are defined or used in the Withholding Law have the meaning given to them in or for the Withholding Law when used in this clause.

### 36.3 Seller’s Withholding Notice

If section 14-255 of the Withholding Law applies to the supply of the Property, the Seller must, prior to Settlement, provide a Withholding Notice to the Buyer.

### 36.4 Withholding

- (a) This clause applies if, under the Withholding Law, the Buyer is required to withhold an amount from the consideration payable to the Seller on the taxable supply of the Property under this Contract (“**GST Withholding Amount**”) and pay it to the Commissioner.
- (b) For the purposes of the standard clause “Balance of the Purchase Price,” the Seller irrevocably directs the Buyer to draw a Bank Cheque for the GST Withholding Amount in favour of the Commissioner (“**GST Cheque**”).
- (c) The Buyer must, as an Essential Term:
  - (i) For each person comprising the Buyer complete and lodge with the Commissioner the GST Notifications and give copies of them to the Seller with the payment reference number (PRN) on or before Settlement; and
  - (ii) Provide the GST Cheque to the Seller at Settlement in accordance with section 16-30(3) of the Withholding Law.
- (d) On Settlement, or within such further period (if any) as may be allowed by the Commissioner, the Seller must deposit the GST Cheque to the credit of the Commissioner.

### 36.5 Electronic Settlement

If settlement is to be conducted through the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions, the Seller and the Buyer will be taken to have complied with clause 36.3 if the electronic settlement schedule within the electronic workspace used for Settlement specifies payment of the GST Withholding Amount to the account nominate by the Commissioner.

### 36.5 Treatment of Withheld Amount

An amount withheld and paid by the Buyer under clause 36.4(c)(ii) or clause 36.5 is treated as having been paid to the Seller.

### 36.6 Effect on other rights and obligations

Except as expressly set out in this clause, the rights and obligations of the Parties under this Contract including any provisions relating to the application of the margin scheme, are unchanged.

### 36.7 Other Information

- (a) The Seller must provide the Buyer with such information as the Buyer reasonably requires to comply with the Buyer's obligation to pay the GST Withholding Amount.
- (b) If the Buyer is registered (within the meaning of the GST Act) and acquires the Property for a creditable purpose, the Buyer must give written notice to the Seller stating this no later than 10 Business Days before the Settlement Date.

**EXECUTED AS A DEED**

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

**Signed sealed and delivered by**  
The Buyer in the presence of

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Buyer

\_\_\_\_\_  
Full name of Witness

**Signed sealed and delivered by**  
The Buyer in the presence of

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Buyer

\_\_\_\_\_  
Print full name of Witness

**Executed as a deed by**  
The Buyer  
pursuant to section 127 of the  
Corporations Act 2001 (Cth)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print full name of Director

\_\_\_\_\_  
Print full name of Director

**Executed as a deed by**  
Heran Consolidated Pty Ltd ACN 125 668 260  
as the Seller by its Attorney under registered  
Power of Attorney No 717189847 in the  
presence of

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Print full name of Witness

\_\_\_\_\_  
Print full name of Attorney

**SCHEDULE 1**  
**SPECIAL CONDITIONS**

## SCHEDULE 2

### DEED OF GUARANTEE AND INDEMNITY

TO: **Heran Consolidated Pty Ltd A.C.N. 125 668 260**

**(“Seller”)**

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

FROM: Guarantor 1 Name \_\_\_\_\_

Guarantor 1 Address \_\_\_\_\_

FROM Guarantor 2 Name \_\_\_\_\_

Guarantor 2 Address \_\_\_\_\_

**(“Guarantor”)**

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 of the Buyer of all 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 howsoever 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;
    - (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 by the buyer in the Contract;
    - (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 place; 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 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 relating to the Contract or this Guarantee and Indemnity;
  - 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 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 or 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 the 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 word "including" (and any similar expression) is not used as a word of limitation.

Any terms defined in the Contract have the same meaning when used in this Guarantee and Indemnity.

Dated this \_\_\_\_\_ 20\_\_

**EXECUTED as a Deed: -**

**SIGNED, SEALED AND DELIVERED** )  
By Guarantor 1 named above )  
in the presence of: )

\_\_\_\_\_  
Guarantor 1 - Signature

\_\_\_\_\_  
Witness:

**SIGNED, SEALED AND DELIVERED** )  
By Guarantor 2 named above )  
in the presence of: )

\_\_\_\_\_  
Guarantor 2 - Signature

\_\_\_\_\_  
Witness: