

# STANWORTH RESIDENCES

97-107 Stanworth Road  
Boondall Qld 4034

## SALE CONTRACT

WARLOW SCOTT |  
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# SALE CONTRACT – STANWORTH RESIDENCES

The Seller and the Buyer agree to sell and buy the Lot under this Contract on the following terms:

<b>REFERENCE SCHEDULE</b>
---------------------------

- A CONTRACT DATE** The.....day of.....202...
- B AGENT**  
Tel: (07) Fax: (07)
- C SELLER**  
NOVADECK PTY LTD A.C.N. 602 273 932  
/- Warlow Scott Lawyers  
Level 7, 79 Adelaide Street, Brisbane QLD 4000  
Tel: (07) 3002 7444 Fax: (07) 3002 7474  
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- D SELLER'S SOLICITOR**  
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E Mail: [info@warlowscott.com.au](mailto:info@warlowscott.com.au)
- E BUYER**  
Name:.....  
Address:.....  
Tel: ..... Fax: .....  
Email:.....
- F BUYER'S SOLICITORS**  
Name:.....  
Address:.....  
Tel: ..... Fax: .....  
Email:.....
- G LOT SOLD**  
Proposed Lot Number ..... substantially in accordance with the Lot indicated on the Disclosure Plan contained in Schedule 1 of the Disclosure Statement
- H PURCHASE PRICE** \$..... (\$ .....00)
- I DEPOSIT** \$..... Payable as follows:  
(a) \$.....on signing  
(b) \$.....being the balance by / / 202...  
(c) \$.....by Bank Guarantee by / / 202...

**J GUARANTORS** Guarantor 1 (Name) .....  
(Address).....

Guarantor 2 (Name) .....  
(Address) .....

**K TAX FILE NUMBERS** (Buyer 1).....  
(Buyer 2).....

**L FOREIGN INTEREST**  NO  YES [tick as applicable]

**M FINANCE** (a) Lender or Class of Lender .....  
(b) Finance Approval Date .....  
(c) Amount of Loan \$ .....

**N SWIMMING POOL** There will be a shared pool as part of the Scheme, or on adjacent land used in association with the Scheme  
 NO  YES See Disclosure Statement for Notice of no pool safety certificate

**O TYPE OF HOLDING**  Owner Occupier [tick as applicable]  
 Investor

**P TRUSTEE OR CORPORATE BUYER** Is the Buyer a corporation or a trustee?  
 Yes  
 No

If yes, specify the directors, major shareholders or beneficiaries

Name:  
Address:

Name:  
Address:

**Q GST WITHHOLDING DISCLOSURE** The Seller gives notice to the Buyer in accordance with section 14-255(1) of the Withholding Law that the Buyer is required to make payment to the Australian Taxation Office under section 14-250 of the Withholding Law in relation to the Supply of the Lot;

**GST Withholding Amount** \$..... (7% of Purchase Price)

See clause 30 of the Contract

# CONTRACT TERMS

## 1. DEFINITIONS

1.1 Unless the context otherwise requires:

<b>“Act”</b>	means the <i>Body Corporate and Community Management Act 1997 (Qld)</i> .
<b>“Agent”</b>	means the party named in Item B of the Reference Schedule.
<b>“Approved Safety Switch”</b>	means a residual current device as defined in the <i>Electrical Safety Regulation 2002 (Qld)</i> .
<b>“Approval”</b>	Means any approval of a federal, state or local government or any authority relating to the land, and the buildings built or to be built on the Land including the Building, the Lot and includes without limitation the sealing of the Plan and Community Management Statement by the Local Authority and the issue of any other approval or consent which otherwise affects the Seller’s ability to settle the Contract.
<b>“Architect”</b>	means the architect nominated by the Seller for the purpose of any clause of this Contract.
<b>“ATO”</b>	means the Australian Taxation Office.
<b>“Balance Purchase Price”</b>	means the Purchase Price less the Deposit as adjusted under this Contract.
<b>“Bank Guarantee”</b>	means an unconditional bank guarantee from an Australian Bank, unlimited as to time and wholly satisfactory to the Seller.
<b>“Body Corporate”</b>	means the Body Corporate of the Scheme and where the context permits shall include a principal body corporate and any other subsidiary body corporate.
<b>“Body Corporate Agreements”</b>	means agreements with proposed service contractors, body corporate managers, letting agents and utility suppliers.
<b>“Builder”</b>	means the builder the Seller engages to construct the Building.
<b>“Building Contract”</b>	means the Contract entered into by the Seller with the Builder constructing the Building.
<b>“Building”</b>	means the building or buildings containing the Lot.
<b>“Building Management Statement”</b>	means the proposed Building Management Statement (if any) to be registered for the Building and includes any amendments to the Building Management Statement registered or to be registered.
<b>“Business Day”</b>	means a day (other than a Saturday, Sunday or public holiday) on which Banks are open for business in Brisbane.
<b>“Buyer”</b>	shall include the Buyer named in Item E of the Reference Schedule, their heirs, executors, administrators, successors and permitted assigns.
<b>“By-Laws”</b>	means the By-Laws of the Body Corporate.

<b>“Claim”</b>	means a claim, action, proceeding, damage, cost, loss, expense or liability however arising whether present, unascertained, immediate, future or contingent.
<b>“Common Property”</b>	means so much of the Scheme Land as is not comprised in any lot of the Scheme.
<b>“Community Management Statement”</b>	means the statement pursuant to the Act for the Scheme substantially in accordance with the proposed community management statement annexed to the Disclosure Statement.
<b>“Community Titles Scheme”</b>	means the Scheme to be established for the Land under the Act.
<b>“Compliant Smoke Alarm”</b>	means a smoke alarm complying with sections 104RB(2) or (4) of the <i>Fire and Rescue Service Act 1990 (Qld)</i> .
<b>“Contract”</b>	means this Contract.
<b>“Contract Date”</b>	means the date the Seller executes this Contract.
<b>“Construction Works”</b>	means anything to be done for planning, laying out or completing any works required to complete the development of the Scheme and any property adjoining the Scheme, including without limitation, changing the Common Property, excavation, general earth works, construction of Common Property improvements, installation of utility infrastructure, installing rock anchors, use of air space, cutting holes in walls and floors for access to a lot, building directly next to any Common Property walls, preventing or limiting access to areas of Common Property for construction purposes or using Common Property temporarily or permanently for support or other reasonable purposes.
<b>“Court”</b>	includes any tribunal established under statute.
<b>“Covenant A”</b>	means the covenant shown on the Plan;
<b>“Creditable Purpose”</b>	has the same meaning as defined in the GST Act.
<b>“Default Interest Rate”</b>	means 12% per annum calculated daily compounded monthly.
<b>“Deposit Bond”</b>	means an unconditional deposit bond, unlimited as to time, from an issuer and in a form acceptable to the Seller in their absolute discretion.
<b>“Disclosure Plan”</b>	means the plan under section 213AA of the Act contained in Schedule 1 of the Disclosure Statement.
<b>“Disclosure Statement”</b>	means the statement under Section 213 of the Act.
<b>“DSI”</b>	Means Deduction for Site Improvement.
<b>“DNRM”</b>	means the Department of Natural Resources Mines and Energy.
<b>“Essential Term”</b>	means in case of a breach by: <ul style="list-style-type: none"> <li>(a) the Buyer: <ul style="list-style-type: none"> <li>(i) clause 4.1(b) (Balance Purchase Price)</li> </ul> </li> </ul>

- (ii) clause 5 (Deposit);
- (iii) clause 6.1 (Settlement);
- (iv) clause 16.5 (Proxy);
- (v) clause 35 (Buyer as Trustee);
- (vi) clause 38 (Buyer's Warranties); and
- (vii) clause 40 (Time of the Essence)

(b) the Seller:

- (i) clause 6.2 (Settlement); and
- (ii) clause 40 (Time of the Essence)

but nothing in this definition precludes a Court from finding other terms to be essential.

**“Facilities”**

means:

- (a) facilities forming part of the development of the Scheme including those comprising Common Property or Body Corporate assets;
- (b) utilities and utility infrastructure; and
- (c) services or amenities to or for the benefit or enjoyment of the Scheme or owners.

**“Foreign Person”**

has the meaning ascribed to it by Section 21A of the *Foreign Acquisition and Takeovers Act 1975 (Cth)* as the meaning of that expression is extended by the operation of subsection 4 (6) of that Act.

**“GST”**

means any money payable pursuant to the GST Act.

**“GST Act”**

means the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**“GST Property Settlement Withholding Notification Form”**

means the form of that name issued by the ATO or any subsequent form issued in replacement thereof by the ATO.

**“GST Property Settlement Date Confirmation Form”**

means the form of that name issued by the ATO or any subsequent form issued in replacement thereof by the ATO.

**"Guarantors"**

means those parties named at Item J of the Reference Schedule and described in the guarantee contained in Schedule 1 of this Contract.

**“General Purpose Socket Outlet”**

means an electrical socket outlet as defined in the *Electrical Safety Regulations 2002*.

**"Land"**

means the land described as lot 1 on RP 209072, lot 4 on RP209073 & lot 7 on RP 209074 title references 16967099, 17041202 & 17089222.

**“Local Authority”**

means the local government having jurisdiction over the Land.

**“Lot Entitlement”**

means the contribution and/or interest entitlement of a lot in the Scheme as specified in the Community Management

Statement.

- "Lot"** means the proposed lot described in Item G of the Reference Schedule.
- "Management Rights"** means the rights contained in any caretaker's agreement and letting agreement.
- "Minor Defect"** means any defect which does not materially affect the Lot as a whole.
- "Minor Variation"** means a variation of no more than 5%, where such variation can be measured, and otherwise where there is no material affect on the Lot as a whole.
- "Notice of no pool safety certificate"** means the Form 36 under the *Building Regulations 2006 (Qld)* to the effect that there is no Pool Safety Certificate issued for the Land and/or the Lot.
- "Object"** means to object generally and includes:
- (a) object to a variation, change or substitution;
  - (b) object to Title;
  - (c) avoid or attempt to avoid this Contract;
  - (d) refuse to effect Settlement;
  - (e) delay Settlement;
  - (f) Claim compensation or any reduction in Purchase Price;
  - (g) retain any part of the Purchase Price;
  - (h) make any requisition;
  - (i) require the Seller to carry out any works or to provide any undertaking in relation to the Lot;
  - (j) require the Seller to carry out any works or to provide any undertaking in relation to the or the Exclusive Use Areas (if any);
  - (k) withhold a consent;
  - (l) seek an injunction; or
  - (m) make or threaten any Claim.
- "Objection" and "Objecting"** have a corresponding meaning.
- "Outgoings"** includes:
- (a) rates, water and other charges on the Land or the Lot levied by the Local Authority;
  - (b) Land Tax;
  - (c) Regular periodic contributions payable to the Body Corporate; and
  - (d) Insurance premiums payable by the Seller under Section 191 of the Act.

<b>“Particulars”</b>	means the items appearing in the Reference Schedule of this Contract.
<b>“Plan”</b>	means the Survey Plan in respect of the Land and the Lot proposed to be registered by the Seller at DNRM.
<b>“Pool Safety Certificate”</b>	means either: <ul style="list-style-type: none"> <li>(a) a certificate of compliance; or</li> <li>(b) an exemption from compliance</li> </ul> issued in accordance with the requirements for pool safety contained in the <i>Building Act 1975</i> (Qld) and <i>Building Regulations 2006</i> (Qld).
<b>“Reference Schedule”</b>	means the details at the commencement of the Contract.
<b>“Regulation Module”</b>	means the Regulation Module as specified in the Community Management Statement.
<b>“Scheme”</b>	means the proposed Community Title Scheme containing the Lot.
<b>“Settlement”</b>	means when the Buyer performs its obligations under this Contract on the Settlement Date.
<b>“Settlement Date”</b>	means the later of: <ul style="list-style-type: none"> <li>(a) 14 days after the Seller gives the Buyer written advice that the Scheme has been established or changed and a separate indefeasible title for the Lot has been created (if not established and created as at the Contract Date); and</li> <li>(b) 30 days after the Contract Date.</li> </ul>
<b>“Seller”</b>	means the party named in Item C of the Reference Schedule and shall include any of their successors and assigns.
<b>“Specifications”</b>	means the specifications set out in Schedule 2 of the Disclosure Statement.
<b>“Special Contribution”</b>	means: <ul style="list-style-type: none"> <li>(a) any amount levied by the Body Corporate under the Regulation Module for a liability for which no provision or inadequate provision has been made in the budget of the Body Corporate; or</li> <li>(b) any amount payable in connection with an exclusive use by-law.</li> </ul>
<b>“Sunset Date”</b>	means the date which is 3 years after the day that the Buyer enters into the Contract (or if the Buyer requests a later date for settlement and the Seller agrees to that date, the later date).
<b>“Supply”</b>	has the same meaning as defined in the GST Act.
<b>“Transfer Documents”</b>	means a Form 24 & Form 1 Transfer under the <i>Land Titles Act 1994</i> (Qld) and a Form 25 Foreign Ownership Information if the Buyer is a foreign person under the <i>Foreign Ownership of Land Register Act 1988</i> (Qld).



**“Trustee”** means Warlow Scott Lawyers.

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

## **2. INTERPRETATION**

### **2.1 Reference to:**

- (a) One gender includes the other genders.
- (b) Singular includes the plural and the plural includes the singular.
- (c) A person includes a body corporate.
- (d) A party includes the parties’ executors, administrators, successors and permitted assigns.
- (e) A statute, regulation or provision of a statute or regulation (“Statutory Provision”) includes;
  - (i) That Statutory Provision as amended or re-enacted from time to time; and
  - (ii) A statute, regulation or provision enacted in replacement of the Statutory Provision.
- (f) All monetary amounts are in Australian dollars, unless otherwise stated.
- (g) If a party consists of more than one person then this Deed binds them jointly and each of them separately.
- (h) Headings are for convenience only and do not form part of this Deed or affect its interpretation.
  - (i) A party which is a trustee is bound both personally and in its capacity as a trustee.
  - (j) “Including” and similar expressions are not words of limitation.
  - (k) 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.
  - (l) If an act must be done, or the last day upon which it may be done, falls on a specified day which is not a Business Day, the act must be done instead on the next Business Day.

## **3. SALE AND PURCHASE**

3.1 The Seller shall sell to the Buyer and the Buyer shall purchase from the Seller an estate in fee simple in the Lot free from any mortgage subject to those otherwise provided for in this Contract.

## **4. PAYMENT OF THE PURCHASE PRICE**

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

- (a) the Deposit which shall be paid to the Trustee in the manner set out in Item I of the Particulars.
- (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.

## **5. DEPOSIT**

- 5.1 The Buyer must pay the Deposit to the Trustee in the manner specified in Item I of the Particulars.
- 5.2 The Buyer will be in substantial breach if it:
- (a) does not pay the Deposit when required;
  - (b) pays the Deposit by post dated cheque;
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- 5.3 The Seller and the Buyer hereby authorise the Trustee to invest the Deposit in an interest bearing account in an Australian bank. The Trustee is under no obligation to make such investment and has the unfettered discretion as to whether any investment is made, provided that if any investment is made then any interest thereon will be paid to:
- (a) if this Contract settles: the Seller;
  - (b) if this Contract is terminated without fault by the Buyer: the Buyer; and
  - (c) if this Contract is terminated owing to the Buyers default: the Seller
- 5.4 The Deposit is invested at the risk of the party who is entitled to it. The Trustee is not liable for any loss to any parties in consequence of such investment. The Trustee may, but is not obliged to, prepare and lodge any taxation returns necessary in respect of the Deposit and interest earned and to pay any tax assessed and the cost of preparing returns out of the interest. The parties indemnify the Trustee against any taxation assessed in respect of that interest. The Parties irrevocably direct and authorise the Trustee to deduct their professional fees and outlays for handling and managing the Deposit from the Deposit and any interest earned on it which is estimated at a minimum of \$110.00 including GST.
- 5.5 The Parties must provide their tax file numbers to the Trustee.
- 5.6 The Buyer may pay all or any part of the Deposit by Bank Guarantee. Any Bank Guarantee must be in a form approved by the Seller in its total discretion and must be unlimited as to time. To satisfy the requirements of this clause any Bank Guarantee must be:
- (a) issued by a bank licensed to trade in Australia, or another financial institution acceptable to the Seller;
  - (b) have a face value equal to the amount of the Deposit to be paid;
  - (c) be issued in favour of the Trustee (as favouree as opposed to specifying the Seller as favouree);
  - (d) specify the consideration for the issue of the Bank Guarantee as the Seller dispensing with the requirement to pay a cash deposit (as opposed to the Trustee dispensing with such requirements);
  - (e) require the issuer of the Bank Guarantee, upon demand by the Seller's solicitors and without reference to the Buyer to pay to the Trustee the face value of the instrument;
  - (f) specify the parties to the Contract as Seller and Buyer (and no third party) and identify that the Bank Guarantee relates to this Contract and the sale made thereunder; and
  - (g) be unconditional, irrevocable and unlimited as to time.

Unless the Seller agrees to the terms of the Bank Guarantee, the Buyer has not complied with clause 5.1.

- 5.7 The Trustee shall be obliged to make demand on the Bank Guarantee if required by the Seller. The Seller shall only require the Trustee to make such demand where the Seller states in writing to the Trustee that it has terminated the Contract and elected to forfeit the Buyer's deposit. The Buyer indemnifies the Trustee in respect of all demands made against it or by it in respect of the Bank Guarantee.
- 5.8 At Settlement, the Buyer must give the Seller, in exchange for the Bank Guarantee, bank cheques totalling the amount secured by the Bank Guarantee. The bank cheques must be payable as directed by the Seller and must be provided at the same time the Buyer pays the Balance Purchase Price.
- 5.9 If the Seller accepts a Bank Guarantee with an expiry or termination date (which the Seller is not required to do), the Buyer must pay the Trustee the Deposit in cash at least 30 days before the expiry or termination. If the Buyer does not, it is a breach of the Contract by the Buyer and in addition to any rights under this Contract for such breach, the Buyer irrevocably authorises the Seller and the Trustee to convert any Bank Guarantee to cash.
- 5.10 If the Seller accepts a Bank Guarantee to secure the Deposit and forms the opinion that the issuer of the Bank Guarantee is not financially secure, the Seller can give the Buyer notice to replace the Bank Guarantee. If the Seller gives such notice, the Buyer must pay the Trustee in cash the amount secured by the Bank Guarantee. If the Buyer fails to do so within 21 days of receiving the Seller's notice, the Buyer will be in breach of this Contract and in addition to any rights under this Contract for such breach, the Buyer irrevocably authorises the Seller and the Trustee to convert any Bank Guarantee to cash.
- 5.11 If the Seller is entitled to convert a Bank Guarantee under the Contract, the Buyer indemnifies (and will keep indemnified) the Buyer and Trustee for any costs or loss suffered in relation to cashing the Bank Guarantee including without limitation legal costs on a full indemnity basis for any legal action taken.
- 5.12 The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.
- 5.13 The Seller is not obliged to accept a deposit bond, undertaking or other security from an insurer as a deposit under this Contract.
- 5.14 If the Seller accepts a Bank Guarantee to secure the Deposit, at Settlement the Buyer will pay to the Seller, in addition to the Balance Purchase Price, an amount equal to the amount of the Bank Guarantee by way of bank cheque payable to or as directed by the Seller and upon Settlement the Seller will release the Bank Guarantee to or as directed by the Buyer.
- 5.15 The Deposit must not exceed 20% of the Purchase Price at any time (the "Maximum Amount"). If:
- (a) a situation arises where the Deposit exceeds, or is likely to exceed, the Maximum Amount, the Seller and the Buyer hereby authorise the Trustee to pay to the Buyer the part of the Deposit which is likely to exceed, or does exceed, the Maximum Amount;
  - (b) the Seller has accepted a Bank Guarantee, the Buyer must at its expense upon receiving written notice from the Seller arrange for the guaranteed sum to be reduced to an amount equal to the Maximum Amount and the Buyer, the Seller and the Trustee must do all acts and sign all documents necessary to facilitate the same;
  - (c) the Seller agrees to offer a rebate, discount or payment, the effect of which would be to reduce the Purchase Price and thereby cause the Deposit to exceed the Maximum Amount, such rebate, discount or payment shall take effect only upon the settlement of this Contract and until settlement the Purchase Price will remain unchanged.

## 6. SETTLEMENT

- 6.1 Settlement shall be effected on the Settlement Date at a venue in Brisbane to be nominated by the Seller's Solicitors between the hours of 9.00am and 5.00pm. If the Seller does not nominate a time for settlement, settlement must take place at 3.00pm on the Settlement Date. Clause 40 (Time of the Essence) does not apply to any time which may be agreed upon between 9.00am and 5.00pm.
- 6.2 The Seller shall provide:
- (a) vacant possession of the Lot;
  - (b) the Transfer Documents for the Lot signed by the Seller;
  - (c) any instrument of title to the Lot; and
  - (d) a duly executed release of any of any mortgage of the Lot.
- 6.3 Upon tender by the Buyer of the Balance Purchase Price, the Buyer hereby irrevocably authorises and directs the Trustee to release the Deposit to the Seller who shall return any Bank Guarantee to the Buyer.
- 6.4 Upon settlement the Seller shall make available to the Buyer, either at the Lot, the Agent's office or at Settlement all keys, codes or devices in the Seller's possession or control for all locks and security systems for the Lot.
- 6.5 If the Seller gives the Buyer notice stating that:
- (a) The issue of a certificate of classification or other approval required to allow legal occupancy of the Lot has been delayed; or
  - (b) The Seller is required to give the Buyer a statement under section 214 of the Act; or
  - (c) The Seller requires additional time in order to meet the Seller's obligations under this Contract,
- then the Seller may extend the Settlement Date by the period stated in the notice (or notice as the case may be). Any notice given under clause 6.5(a) will be conclusive evidence of the delay (or delays as the case may be) or additional time required. The Seller may give more than one notice under clause 6.5.
- 6.6 Despite any other term, Settlement must not take place earlier than 14 days after the date the Seller gives written advice to the Buyer that the Scheme has been established or changed (if not established at the Contract Date).
- 6.7 The Buyer acknowledges that a DSI/ Offset under the Land Valuation Act may be registered on the titles for the Lot and at settlement the Seller is not required to provide any release if any such DSI/Offset.
- 6.8 The Buyer acknowledges that other purchasers may settle contracts with the Seller on dates other than the Settlement Date and the Seller:
- (a) makes no warranty or representation that it will give notice under this Contract calling for settlement within any particular period after establishment or change (as the contract requires) of the Scheme;
  - (b) makes no warranty or representation that all lots in the Scheme will be sold or contracts settled with other purchasers at the same time as this Contract or that other parts of the development will be occupied at the same time as the Scheme;

- (c) may sell other lots in the Scheme on terms that differ from this Contract;
- (d) does not make any representation that during the course of the development that pricing of lots in the Scheme will remain fixed or will not vary; and
- (e) has no obligation not to market or deal with proposed lots or existing lots (after establishment) in the Scheme with reference to the Purchase Price under this Contract or purchase prices paid or payable under other contracts for sales of lots in the Scheme.

6.9 The Buyer shall not be entitled to make any Objection, requisition or claim for compensation or damages or refuse to or delay completion in respect of or by reason of the matters set out in clauses 6.5, 6.7 and 6.9.

## **7. TRANSFER DOCUMENTS**

7.1 The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date to allow sufficient time for the Transfer Documents to be signed by the Seller.

7.2 If the Buyer requests in writing, the Seller will provide signed Transfer Documents to the Buyer's solicitors before settlement so they can be stamped, but only if the Buyer's solicitor provides and undertaking to hold the Transfer Documents on the Seller's behalf and to use them only for stamping purposes before settlement.

7.3 The Seller may at its option prepare the Transfer Documents if it elects to do so, and the Buyer shall notify the Seller of any objections it has to the Transfer Documents and their execution within a reasonable time prior to Settlement, failing which the Buyer shall be deemed to accept them.

## **8. BUILDING MATTERS**

8.1 The Seller shall procure construction of the Lot substantially in accordance with the Disclosure Plan and Specifications and otherwise in accordance with all relevant laws. Sealing of the Plan by the Local Authority and registration by DNRM shall be deemed due compliance with this clause.

8.2 The Seller may make variations in its discretion as a result of requirements of the Local Authority, contractors, consultants and the Builder and standard building practises, including but not limited to:

- (a) Minor Variations in the Disclosure Plan and the Specifications.
- (b) the size, location or appearance of the Building or Common Property.
- (c) the configuration, position or layout of the Lot, and any other lots in the Scheme.
- (d) substitution of any of the materials, fittings, fixtures or chattels described in the Specifications provided that such other materials are of a generally similar quality.
- (e) any other variations, alterations or substitutions that do not materially prejudice the Buyer.
- (f) the size, layout, design of all other lots and Common Property on the Land.
- (g) changing the position and size of car parks, whether as part of the Lot or exclusive use.

8.3 The Buyer acknowledges that:

- (a) the Seller expects to engage a builder to complete the Building and the Scheme and the Seller's contract with a builder will contain similar terms;

- (b) it is common for on site building conditions to vary from those anticipated during the design phase;
- (c) changes to the initial design are often required to comply with the requirements of Local Authorities and/or standard building practices; and
- (d) the Seller is not the builder of the Building or Scheme and such alterations are legitimate given the difficulties experienced in the construction phase.

8.4 The Buyer acknowledges that all measurements and areas on the Disclosure Plan and Specifications are estimates only and are subject to final construction and survey.

8.5 The Buyer has no right to terminate this Contract or claim compensation as a result of any Minor Defects or Minor Variation in measurements provided that the area of the Lot does not materially change, save for car parks which may be reduced in area by more than 5% provided the number of car parks is not reduced. The Buyer acknowledges that this clause is reasonably required by the Seller and has been inserted as:

- (a) the Seller expects to engage a builder to complete the Building and the Scheme and the Seller's contract will contain provisions which will allow the builder make Minor Variations;
- (b) surveyor's requirements may make it necessary to make such variations;
- (c) the survey of the Building or Scheme as it has been constructed may vary based on the different measurement fundamentals used;
- (d) the Seller is not the builder of the Building or the Scheme and such alterations are beyond its control;
- (e) the Seller's financier will reasonably expect a certain number of unconditional contracts in order to provide funding for the construction of the Scheme;
- (f) the Seller does not expect to receive any compensation under any contract entered into with a builder; and
- (g) a variation of 5% is widely accepted as an industry standard.

8.6 The Buyer may claim compensation from the Seller if there is a variation to the Lot which results in the Buyer being materially prejudiced.

8.7 To claim compensation from the Seller under this clause, the Buyer must notify the Seller in writing of its intention to seek compensation. The Seller will have the option to terminate the contract if the Buyer notifies that it will claim compensation.

8.8 The Seller may agree to pay compensation at an amount agreed between the parties. Where an amount of compensation cannot be agreed between the parties under this clause, the amount shall be determined by a licensed quantity surveyor appointed by the Architect.

8.9 The Buyer may not withhold any part of the Balance Purchase Price on account of any matters relating to the Lot or the Building but must rely on its rights under the following Clause. The Buyer acknowledges that:

- (a) it is reasonably necessary to protect the legitimate interests of the Seller;
- (b) the Seller will be obtaining construction finance on the basis that the full Balance Purchase Price is obtained at Settlement;

- (c) any dispute relating to the Lot or Building is most appropriately dealt with after Settlement has occurred; and
- (d) it will receive the full benefit of the defects liability provisions of the Seller's contract with the builder.

8.10 The Seller gives notice to the Buyer that at Settlement:

- (a) An Approved Safety Switch for General Purpose Socket Outlets will be installed in the Lot; and
- (b) A Compliant Smoke Alarm(s) will be installed in the Lot.

8.11 The Seller gives notice to the Buyer in accordance with section 83 of the *Neighbourhood Disputes Resolution Act 2011 (QLD)* that the Land is not affected by any application to, or any order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land.

8.12 The Seller may develop the Land in accordance with the Approval or at the Seller's absolute discretion vary the development of the Land subject to obtaining the necessary variations to the Approval (if and as required) by;

- (a) Constructing the Scheme in accordance with the Approval consisting of 82 lots in two stages, or
  - (b) reducing the number of lots in the scheme to 78, or any other number as approved by the Local Authority; or
  - (c) vary the order in which the stages are to be developed; or
  - (d) constructing flat land lots for the construction of stand-alone dwellings, townhouses or multi-unit high rise dwellings; or
  - (e) not constructing any of the further Stages contemplated by the Approval other than Stage 1;
- or any combination of the above or otherwise at the Seller's absolute discretion.

8.12 The Buyer acknowledges:

- (a) the number of lots in the Scheme, the number of Stages in the Scheme, the number of lots in each Stage, the Contribution and Interest Schedule Entitlements of the Lots and the Community Management Statement may be varied at the Seller's absolute discretion as outlined in this clause 8.
- (b) it is considered just and equitable that the contribution schedule lot entitlements for lots be allocated and reallocated to take into account the matters referred to in clause 8.11 and the extent to which the lots have a differential impact on the costs, benefits and expenses of the Scheme.
- (c) The number of lots within the Scheme, any Stage and/or any Additional Scheme may vary;
- (d) The contribution schedule lot entitlements may be allocated and reallocated as between the lots to reflect a just and equitable balance with respect to the matters referred to in clause 8.
- (e) The Buyer will raise no Objection with respect to the matters raised in this clause 8 including, but not limited to, the contribution schedule lot entitlements changing providing it is just and equitable for the changes to be made.

## **9. DEFECTS LIABILITY PERIOD**

- 9.1 The Seller shall ensure the Building is built by a registered builder.
- 9.2 The Seller shall ensure the Building Contract with the Builder includes a defects liability period of at least 90 days from the Settlement Date whereby the Builder must remedy any defective work or materials in the Lot (other than minor settlement cracks, minor shrinkage, minor imperfections and natural characteristics) ("Defects").
- 9.3 The Seller must use its best endeavours to have the Builder rectify any Defect within a reasonable time of receiving written notice from the Buyer and provided such notice is given within 90 days of the Settlement Date.
- 9.4 The Seller shall not be liable for any other Claims upon completion of all works to the Lot as notified up to the end of the defects liability period. The Buyer acknowledges that this clause is reasonably necessary to protect the rights of the Seller.
- 9.5 The Buyer acknowledges that all concrete surfaces will have minor cracks due to normal settlement and temperature changes and these are not Defects. The Buyer also acknowledges that natural products may be used and these natural products have characteristics that may lead to uneven wear, minor distortion, staining and discolouration.
- 9.6 The Seller is not required to repair or make good any item within a Lot that is covered by a manufacturer's warranty.
- 9.7 Any dispute about whether a Defect has been remedied will be determined by the Seller's Architect acting as an expert and the parties agree to be bound by the decision of the Seller's Architect.

## **10. ADJUSTMENTS**

- 10.1 All Outgoings in respect of the Land or the Lot shall be borne and paid by the Seller up to and including date of registration of the Plan and thereafter shall be borne and paid by the Buyer and the same if necessary shall be apportioned between the Seller and the Buyer.
- 10.2 If a separate assessment of any Outgoing has not issued in respect of the Lot, such adjustment shall be made in the proportion which the contribution schedule entitlement of the Lot bears to the aggregate contribution schedule lot entitlement of all lots to which the Outgoing relates.
- 10.3 Land tax shall be apportioned on the basis of the actual land tax that would be payable by the Seller apportioned between any other land that may be included in any assessment on the basis of their respective taxable values and disregarding any statutory exemptions or thresholds.
- 10.4 Unless and until contributions to the Body Corporate are determined and levied, Outgoings paid by the Seller which would properly be the subject of such contributions when determined and levied shall be adjusted between the parties on the basis that the levies estimated in this Contract apply.
- 10.5 If the Buyer is not able to obtain a clearance from the relevant authority in respect of the Land or the Lot due to actual assessments in respect of any Outgoings for the Land or the Lot not having issued or having issued remain unpaid then the relevant Outgoing shall be adjusted between the parties on the basis that it has been paid and, if necessary, on the basis of the Seller's estimate of the Outgoing to be assessed, and the Buyer will accept an undertaking by the Seller (hereby given) that it will pay the same and the Buyer shall not be entitled to make any retention of the Purchase Price on account thereof or refuse to complete or delay Settlement.

## **11. DEFAULT**

- 11.1 Without limiting any other right or remedy of the parties including those under this Contract or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential



Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this Contract.

- 11.2 If the Seller affirms this Contract it may sue the Buyer for;
- (a) damages;
  - (b) specific performance; or
  - (c) damages and specific performance.
- 11.3 If the Buyer affirms this Contract it may sue the Seller for:
- (a) damages;
  - (b) specific performance; or
  - (c) damages and specific performance.
- 11.4 If the Seller terminates this Contract it may do all or any of the following:
- (a) resume possession of the Property;
  - (b) forfeit the Deposit and interest earned on its investment;
  - (c) sue the Buyer for damages; or
  - (d) resell the Property.
- 11.5 If the Buyer terminates this Contract it may do any of the following:
- (a) recover the Deposit and any interest earned (if any);
  - (b) sue the Seller for damages.
- 11.6 The Seller may recover from the Buyer as liquidated damages:
- (a) any deficiency in price on a resale; and
  - (b) its expenses connected with this Contract, any repossession, any failed attempt to resell, and the resale.
- 11.7 Any profit on a resale belongs to the Seller.
- 11.8 The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on a Solicitor and own client basis, any agent's commission and any holding costs.
- 11.9 If any money payable by the Buyer under this Contract is not paid when due, the Buyer must pay the Seller at Settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made. The Seller may recover that interest from the Buyer as liquidated damages. Any judgement obtained by the Seller against the Buyer shall bear interest at the same rate from the date of judgement until payment.
- 11.10 The Buyer must pay to the Seller interest on any damages payable for breach of this Contract at the Default Interest Rate from the date of the breach until payment.

## **12. TITLE**

12.1 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 the Local Authority, 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 the Local Authority;
- (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, covenant, environmental covenant or other encumbrances required by the Local Authority 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) any transformer on the Scheme for the purposes of electricity supply.

12.2 The Seller may mortgage the Land at any time.

12.3 If this Contract is an installment contract under the *Property Law Act 1974 (Qld)*, then the Buyer consents to the Seller mortgaging or charging the Land (including the Lot) from time to time on terms and conditions that the Seller in their sole discretion determines. The Buyer acknowledges that this consent is a consent for the purposes of the *Property Law Act 1974 (Qld)*.

12.4 The Seller is not required to provide any undertaking or release under the *Personal Property Securities Act 2009 (Cth)* at Settlement.

12.5 The Buyer is not entitled to deliver any requisitions or enquiries to the Seller as to the Seller's title to the Lot.

12.6 The Buyer acknowledges:

- (a) the Body Corporate will own and maintain any private internal fire main and fire hydrant(s) servicing the Scheme and be responsible for the water charges payable to the local water authority in respect of the private main and hydrant(s) and the on-going maintenance thereof in accordance with the terms of the Development Approval;
- (b) the Body Corporate will be subject to an environmental covenant (Covenant A) with the Brisbane City Council in accordance with section 97A of the Land Title Act as required under the Development Approval regarding the Body Corporate's responsibilities, liabilities, measures, remedies and intents to ensure the management of the identified vegetation and ecological features on Covenant A with respect to :
  - (i) Maintenance of vegetation and ecological features including (if applicable):
    - (1) retention of vegetation and tree hollows;
    - (2) maintenance of nesting boxes;
    - (3) ongoing weed control;
    - (4) rehabilitation in accordance with an approved rehabilitation plan for the Scheme.
  - (ii) Maintenance of fauna movement fences where identified within any approved rehabilitation plan under the Development Approval;
  - (iii) Exclusion from the covenant area of all buildings and structures (including swimming pools, tennis courts, retaining walls), open space, all associated facilities, landscaping, on-site stormwater infrastructure, on-site wastewater treatment, all areas of disturbance (including excavation and filling), on-site parking, access and manoeuvring areas other than a perimeter fence for the Scheme , unless otherwise specified in the Development Approval or subsequent approvals from Council.
- (c) The Body Corporate will maintain at the Body Corporate's cost the certified Water Quality Maintenance Plan and the stormwater treatment strategy as required under the terms of the Development Approval;
- (d) the Body Corporate and the Lot Owners indemnify Brisbane City Council Waste Services and it's agents in respect of any damage to the pavement and other driving surfaces caused by refuse collection vehicles entering the Scheme ; and
- (e) the development of the Scheme has been approved on the basis that this indemnity is provided for refuse collection vehicles to enter the Scheme.

and the Buyer will raise no Objection in this regard.

### **13. WARRANTIES**

13.1 The Buyer shall not deliver any requisitions or enquiries on title.

13.2 The Seller warrants that at Settlement:

- (a) it will be the registered owner of an estate in fee simple in the Lot; and
- (b) it will be capable of completing this Contract.

13.3 Notwithstanding anything hereinbefore contained the Buyer shall not be entitled to make any Objection, requisition or claim for compensation or damages or refuse to or delay completion in respect of or by reason of:

- (a) any boundary of the Land or Lot not being fenced as it is not reasonably necessary to complete the Scheme;
- (b) any buildings of adjoining owners encroaching on the Land or the Lot as it is not within the Seller's control;
- (c) any Minor Variation in the Lot as contemplated by this Contract;
- (d) any variation in Exclusive Use Area(s) as contemplated by this Contract;
- (e) any changes or variations contemplated by clause 32;
- (f) any buildings of adjoining owners encroaching on the Land or the Lot as it is not within the Seller's control;
- (g) the name chosen by the Seller for the Scheme;
- (h) the size, location or amalgamation of any lot excluding the Lot;
- (i) any variation in the number of lots on the Disclosure Plan, or the number, size, location or lot entitlement or permitted use of any lot on the Disclosure Plan (including the Lot) or in or to the Common Property or rights in relation to the use thereof. The Buyer acknowledges that this clause is reasonably required by the Seller as:
  - (i) the Seller specifically requires the right to vary the Building and Scheme to increase yield and commercial viability;
  - (ii) the sale of management rights frequently require such amendments;
  - (iii) estimates of levies need to be accurate and updated accordingly; and
  - (iv) on site managers frequently require use of different areas of the Common Property for efficient operation of the Scheme;
- (j) any Minor Variation in the Disclosure Plan or the Specifications. The Buyer acknowledges that this clause is reasonably required by the Seller as:
  - (i) the Seller specifically requires the right to vary the Building and Scheme to increase yield and commercial viability;
  - (ii) the sale of management rights frequently require such amendments;
  - (iii) estimates of levies need to be accurate and updated accordingly; and
  - (iv) on site managers frequently require use of different areas of the Common Property for efficient operation of the Scheme
- (k) the By-Laws of the Body Corporate incorporated upon registration of the Scheme being amended subsequent to such registration as set out in the Community Management Statement in such other manner as the Seller may in its sole discretion deem desirable. The Buyer acknowledges that this clause is reasonably required by the Seller as:
  - (i) it is required to comply with requirements of Local Authorities;

- (ii) from time to time the Scheme requires practical changes to be made; and
  - (iii) caretakers and letting agents of the Scheme from time to time require changes for the practical and efficient running of the Scheme.
- (l) the existence or passage through or on the Land or Lot, or any adjoining property, of mains, pipes, wires or connections or any water, sewerage, drainage, gas, electricity, telephone, security or other system or service whether protected by easement or otherwise. The Buyer acknowledges that allowances for these are made under the Building Code of Australia and installation is practically required for the Scheme and installed in accordance with the Building Code of Australia and the requirements of the Local Authority;
  - (m) DNRM allotting a different number or numbers from the Lot number or numbers allotted by this Contract to the Lot on registration of the Plan;
  - (n) the numbering, size or location of any car space, whether as part of the Lot or as exclusive use. The Buyer acknowledges that this clause is reasonably required to assist the surveyor and DNRM in registering the Scheme and that all carparks will be not be smaller than the minimum size prescribed by Australian Standards;
  - (o) any onsite manager, caretaker or letting agent or their nominee not residing at the Scheme;
  - (p) any part of the Lot being changed from lot on title to exclusive use, whether car park, courtyard, balcony or internal area;
  - (q) alterations to the area or dimensions of the Scheme Land or the transfer or dedication of any part of it in accordance with the Approvals;
  - (r) the provisions of the Community Management Statement, Building Management Statement (if any) or any easement;
  - (s) changes to any document in the Disclosure Statement (including but not limited to caretaking and letting agreements) as the Seller decides in its absolute discretion;
  - (t) changes to the Body Corporate levies or Lot Entitlements as long as any change in the ratio of the Body Corporate levies or Lot Entitlements of a Lot to the aggregate Lot Entitlement of all lots is not substantially varied.
  - (u) the Seller causing the Body Corporate to hold meetings prescribed under the Regulation Module;
  - (v) the content, size, location or timing of completion of any Facilities;
  - (w) the Body Corporate entering into or not entering into the Body Corporate Agreements;
  - (x) any encroachment on the Common Property by improvements on neighbouring land or vice versa;
  - (y) the content of the Building Management Statement (if any) or any change in the land the subject of any Building Management Statement;
  - (z) the Seller causing the Building Management Statement management committee (if any) to pass resolutions as reasonably necessary to attend to matters of business as the Seller considers necessary;

- (aa) the Seller convening meetings of the building management committee established under any Building Management Statement to conduct any other business which the Seller considers necessary;
- (bb) the Seller (or a related party) becoming a service contractor by entering into agreements and arrangements disclosed in the Disclosure Statement;
- (cc) the revision of the proposed budget information (as detailed in the Disclosure Statement) if circumstances (such as the underlying costs of services or equipment) change;
- (dd) the existence of columns next to any car park(s) which may interfere with the convenient use of the car park(s);
- (ee) the proposed building name shown on the Contract or in the Disclosure Statement not forming part of the name of the Body Corporate;
- (ff) the Seller subdividing or amalgamating any lots other than the Lot;
- (gg) the Seller making changes to the location of any walls, hallways or layout of buildings in the Scheme;
- (hh) the inclusion of additional land into the Scheme whether as a lot or Common Property;
- (ii) the transfer, dedication or excise of any land out of the Land, the Scheme Land or the Scheme;
- (jj) the Seller replacing or updating materials disclosed in the Disclosure Statement;
- (kk) an alteration in the access arrangements and Facilities intended to benefit or burden the Scheme;
- (ll) the Seller causing an alteration to the number of floors in the Building (or any building in any Stage) by inserting additional floors or omitting proposed floors and any consequential changes to the location of the Lot in terms of level or height within the Building;
- (mm) the creation of community titles schemes in addition to the Scheme and/or the creation of a Layered Arrangement of community titles schemes and the recording of a number of community management statements and survey plans in order to facilitate this;
- (nn) the Seller making changes to the Disclosure Plan (and therefore the Plan) including converting the Disclosure Plan (and the Plan) into a series of plans to facilitate a layered arrangement of community titles schemes, staging or further staging of the Scheme;
- (oo) Common Property (or proposed Common Property) comprising the foyer area outside of a lot being added to the titled area of that lot or any balcony or other external area of any lot (including the Lot) being removed from the title of that lot provided exclusive use of that area is granted to the owner of the lot;
- (pp) certificates of classification being issued at different times for different parts of any Stage or Stages;
- (qq) construction of the development being carried out progressively in any sequence determined by the Seller;
- (rr) Facilities being made available for use at different times including after Settlement;
- (ss) any change in regulation module to apply to the Scheme;

- (tt) the non-disclosure of service location diagrams as part of the proposed Community Management Statement;
- (uu) electricity, water, gas or other utilities being supplied to the Lot and/or the Body Corporate by the Body Corporate or the Seller or any party nominated by the Seller including if the Buyer is required to enter into an agreement with such supplier in relation to the supply of the relevant utility;
- (vv) Construction Works, including on property adjoining the Scheme, which may create noise, pedestrian and vehicle traffic and related activities and may cause inconvenience or disruption to the Buyer or an occupier of the Lot;
- (ww) shared easements for access and/ or services with land adjoining the Scheme;
- (xx) the existence of any electrical substation or transformer or telecommunications facility (including a tower or satellite dish) or similar thing that provides for the carriage of communication by any means whatsoever; and/ or
- (yy) any exclusive use rights, occupation authority or special rights given over the Common Property to any other party. This is to assist in the efficient and proper operation and maintenance of the Scheme.

#### **14. BODY CORPORATE**

- 14.1 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.
- 14.2 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.
- 14.3 Following recording of the Community Management Statement the Seller may cause the Body Corporate to enter into the following agreements:
  - (a) an agreement with a Body Corporate Manager on similar terms disclosed in the Disclosure Statement with variations as the Seller may determine;
  - (b) a letting agreement on similar terms disclosed in the Disclosure Statement with variations as the Seller may determine;
  - (c) agreements with the service contractors (if any) disclosed in the Disclosure Statement on similar terms disclosed in the Disclosure Statement with variations as the Seller may determine;
  - (d) a caretaking agreement on similar terms disclosed in the Disclosure Statement with variations as the Seller may determine;
  - (e) any other agreements to enable the Body Corporate to carry out its function as a Body Corporate.
- 14.4 The Buyer agrees that any consideration paid to cause the Body Corporate to enter any of the agreements referred to above will belong to the Seller absolutely.
- 14.5 The Buyer acknowledges:

- (a) the Seller may allocate to other owners of lots exclusive use, occupation authorities, or special rights over various parts of the Common Property.
- (b) such allocations will include the occupation authorities referred to in the Disclosure Statement in favour of the proposed caretaker and letting agent.
- (c) that it shall not be materially prejudiced by any allocation of exclusive use, occupation authority, or special rights provided that access to the Lot is not directly affected.

14.6 Where an easement, lease, licence or other right over any part of the Common Property or a Lot is required by the Local Authority or other authority with appropriate jurisdiction or is considered necessary by the Seller for the provision of services for the benefit of the Body Corporate or any lot in the Scheme:

- (a) the Seller may do all things necessary to grant the easement, lease, licence or other right including, for example, holding a meeting of the Body Corporate at which it exercises the power of attorney or proxy referred to in this Contract;
- (b) the Buyer may not make any Objection, requisition or claim for compensation as a result of the grant of easement, lease, licence or other right;
- (c) the fact that the easement, lease, licence or other right may not then be registered in DNRM is not to delay settlement.

## **15. CHATTELS**

15.1 This sale includes the chattels (if any) listed in the Specifications. 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 Specifications are not available or are otherwise not obtained by the Seller for inclusion in the Lot, the Buyer shall take no Objection 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 Specifications.

15.2 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.

15.3 The chattels are at the risk of the Seller until Settlement.

## **16. APPOINTMENT OF PROXY**

16.1 The Buyer appoints the Seller (including a nominee of the Seller) as the proxy of the Buyer to vote at a general meeting of the Body Corporate on the following matters:

- (a) the engagement of a person as a Body Corporate Manager or service contractor or authorising a person as a letting agent if the details of the engagement or authorisation were disclosed to the Buyer before the Buyer entered into this Contract;
- (b) authorising a service contractor or letting agent to use a part of the Common Property;
- (c) consenting to the recording of a new Community Management Statement to include any new By-Law reasonably required by the Seller;
- (d) all matters raised in the Disclosure Statement;
- (e) consenting to the recording of a new Community Management Statement to include details not inconsistent with the matters contained in this Contract.



This proxy is irrevocable for a period of one (1) year after the Community Titles Scheme is established or changed, whichever is the longer.

- 16.2 The Buyer agrees to ratify and confirm any action taken by the Seller to vote at meetings of the Body Corporate using this proxy.
- 16.3 While this proxy remains in force the Buyer must not transfer or assign the Lot other than to a transferee or assignee who has first agreed to be bound by the provisions of this Clause and who has executed a proxy in favour of the Seller in the same terms as this Clause.
- 16.4 The Buyer will not grant a mortgage of the Lot without first providing a copy of this Contract to the mortgagee and procuring the mortgagees agreement to be bound by the provisions of this Clause.
- 16.5 The Buyer shall execute and deliver to the Seller by Settlement the proxy form contained in the Disclosure Statement, duly completed and signed in favour of the Seller or its nominee.

## **17. POWER OF ATTORNEY**

- 17.1 The Buyer irrevocably appoints the Seller and the directors of the Seller jointly and severally as the attorneys of the Buyer to perform, to the exclusion of the Buyer, the following acts;
- (a) attend and/or vote in the name of the Buyer at meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to in Clause 17.2;
  - (b) complete, sign and lodge a voting paper or other document (including a corporate owner nominee appointment form or representative appointment form and any notice under the Regulation Module) to allow the Seller to vote in the name of the Buyer at all meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to below; and/or
  - (c) complete, sign and lodge any written consent pursuant to section 171 of the Act as may be required to pass any exclusive use by laws to allocate exclusive use areas in the Scheme, consequent upon the establishment of a new Scheme.
- 17.2 The motions or resolutions in respect of which the Seller is appointed the attorney of the Buyer to the exclusion of the Buyer are the following:
- (a) consent to the recording of a new Community Management Statement to facilitate the progressive development of the Scheme and the Land identified in this Contract and all alterations, modifications or adjustments (including adjustment of the contribution schedule lot entitlements and the interest schedule lot entitlements and the creation of additional Common Property) which are necessary for the Seller to develop the Land;
  - (b) the re-subdivision of any lot owned by the Seller in the Scheme to create additional lots and Common Property;
  - (c) the amalgamation of any lot owned by the Seller;
  - (d) consent to the recording of a Building Management Statement (if any);
  - (e) consent to the recording of a new Community Management Statement to implement the development of the Scheme and the Land proposed by this Contract or the Community Management Statement currently in force;
  - (f) consent to the recording of a new Community Management Statement to record allocations under any exclusive use bylaw or to record any additional or replacement exclusive use bylaw to allocate exclusive use areas in the Scheme;

- (g) consent to the affixing of the seal of the body corporate to all forms required to be lodged in the Department of Natural Resources & Mines;
- (h) consent to the grant of any easement, lease, licence or occupation authority referred to in this Contract;
- (i) consent to any appeal to any Court deemed appropriate by the Body Corporate;
- (j) the engagement of a person as a Body Corporate manager or service contractor, or authorising a person as a letting agent including the engagement of the Body Corporate manager and the engagement and the authorisation of a manager as disclosed in this Contract;
- (k) the fixing, adoption, variation or ratification of budgets or contributions to be levied by the Body Corporate;
- (l) the composition and/or election of the members of the committee of the Body Corporate;
- (m) a proposal that there shall be no prohibition or restriction on the use of proxies by the original owner;
- (n) an application to be made for an order of an adjudicator under the Act;
- (o) any appeals to be lodged pursuant to the Act;
- (p) the commencement of a proceeding pursuant to the Act;
- (q) the issue of an authorisation to the owner of a lot (including the original owner) to make any improvement contemplated under the Regulation Module including the installation, erection and /or construction of air conditioning equipment, enclosing of carports, construction and installation of storage areas, pergolas, fencing, screening, shutters, security devices or any other associated apparatus and awnings;
- (r) the exercise of any right of the Seller under this Contract;
- (s) any acts or things required of the Body Corporate;
- (t) to elect or appoint Committee Members and Body Corporate Representatives to any Principal Body Corporate and/ or management committee under any Building Management Statement; and
- (u) consent to any development of any adjacent or neighbouring land
- (v) to do any and all things necessary to effect any future Stage of the Development;
- (w) to execute any agreement contained in the Disclosure Statement for the Body Corporate;
- (x) to vote on behalf of the Buyer at all meetings of the Body Corporate and the Committee of the Body Corporate to the maximum extent permissible by law;
- (y) for all purposes of and incidental to those matters outlined above.

17.3 The Buyer agrees to ratify and confirm all the Acts, Deeds and things done or performed under this Power of Attorney. If directed to do so by the Seller at any time, the Buyer must, at the Buyer's expense, take all steps available in order give full effect to the Power of Attorney including signing and completing any further instrument provide by the Seller.

- 17.4 While this Power of Attorney remains in force, the Buyer must not transfer or assign the Lot other than to a transferee or assignee who has first agreed to be bound by the provisions of this Clause in a deed and in a form reasonably required by the Seller and who has executed a Power of Attorney in favour of the Seller and its directors in the same terms as this Clause.
- 17.5 The Buyer will not grant a mortgage of the lot without first providing a copy of this Contract to its mortgagee and procuring the mortgagees agreement to be bound by the provisions of this Clause.
- 17.6 If for any reason the Seller is unable to exercise the rights granted to it by this Clause the Buyer must exercise its rights to vote as the Seller directs but only in relation to the matters set out in the Power of Attorney contained in the Disclosure Statement.
- 17.7 As far as it is lawful, the rights of the Seller under this clause can be exercised in the Seller's total discretion and to exclusion of the Buyer without limitation, the rights of the Seller under this clause can be exercised:-
- (a) even if the exercise involves a conflict of interest or duty; or
  - (b) even if the attorney has a personal interest in doing so.
- 17.8 This clause 17 operates as a Deed.
- 17.9 This Power of Attorney is given pursuant to section 10 of the *Powers of Attorney Act 1988* (Qld) and is given by the Buyer as security for the proprietary interest of the Seller and the performance of its obligations to the Seller and is irrevocable.
- 17.10 This Power of Attorney is irrevocable for a period of one (1) year after the Community Titles Scheme is established or changed, whichever is the longer.

## **18. PLANNING OR BUILDING RESTRICTIONS**

- 18.1 The Seller may terminate this Contract at any time, by written notice to the Buyer if:
- (a) any Local Authority approval is not given or is revoked or changed;
  - (b) any Local Authority approval contains a condition which the Seller is unable or unwilling to comply with;
  - (c) the Buyer, being an individual:
    - (i) dies;
    - (ii) becomes bankrupt;
    - (iii) is sentenced to imprisonment for a term exceeding 1 month; or
    - (iv) is found unable to manage their affairs by reason of unsoundness of mind;
  - (d) the Buyer, being a company:
    - (i) is ordered to be wound up or is placed into provisional liquidation;
    - (ii) enters into a scheme of arrangement for the benefit of creditors;
    - (iii) resolves to go into liquidation; or

(iv) is put in the control of an administrator, a liquidator, receiver and/or manager or an agent of a mortgagee.

(e) the Guarantors fail to give the guarantees required by this Contract;

(f) the Seller at any time does not in its sole discretion obtain a satisfactory number of contracts for sale of other proposed lots;

(g) the Seller at any time gives notice that it will not be proceeding with the development of the Land as contemplated by the Disclosure Plans contained in the Disclosure Statement;

(h) the Seller at any time does not in its sole discretion believe that it can obtain a satisfactory profit margin on the development in all the circumstances applicable at the time of termination.

18.2 The Buyer acknowledges that there is a significant imbalance in the risk involved between it and the Seller and that this clause is reasonably required to protect the interests of the Seller as:

(i) the development of the Scheme involves considerable risk to the Seller;

(ii) the Seller has committed considerable resources to the development of the Scheme;

(iii) the Seller has devoted considerable time and effort;

(iv) the Seller's financier will require a satisfactory number of contracts in order to provide funding to develop the Scheme;

(v) the Seller is entitled to expect a reasonable return for their investment and effort.

18.3 If this Contract is terminated under clauses 18.1(a), (b), (f), (g) or (h) then the Trustee must refund the Deposit to the Buyer and this Contract shall be at an end and neither party shall have any claim against the other save for any antecedent breach.

18.4 If this Contract is terminated under clause 18.1(c), (d) or (e) then the Deposit and all interest shall be forfeited to the Seller and the Trustee must pay the Deposit and any interest to the Seller. In this case the Buyer shall be deemed to have breached an Essential Term and the rights under clause 11 and at common law shall apply in favour of the Seller.

18.5 It is expressly acknowledged by the Buyer that it accepts that the Seller is under no obligation to create the Lot and a refund of any Deposit is in full discharge of any claim the Buyer may have against the Seller.

## **19. STATUTORY NOTICES**

19.1 The Buyer acknowledges that prior to executing this Contract he has 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 17; and

(d) any Form 8 under the *Property Occupation Act 2014 (Qld)* required to be given.

19.2 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.

- 19.3 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 CMS or any BMS;
  - (b) No services location diagram being included in any proposed CMS;
  - (c) No specific car parks, courtyards or storage spaces being specified in Schedule E of the proposed CMS;
  - (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.

## **20. RIGHTS AFTER SETTLEMENT**

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

## **21. SALE OF OTHER LOTS**

- 21.1 The Buyer acknowledges that the Lot will form part of a complex developed by the Seller for sale and hereby consents to the methods used by the Seller in its efforts to sell the remaining lots on the Land including but without limiting the generality of the foregoing, use of signs, use of Common Property and the maintenance of a display unit, provided that in such sales efforts the Seller shall display at all times reasonable consideration for the comfort and convenience of the Buyer.

## **22. SELLER'S RIGHT OF ASSIGNMENT**

- 22.1 The Seller shall have the right at any time prior to the Settlement Date to transfer or assign its interest in the Land or the Lot or this Contract and upon receipt by the Buyer of notice of such transfer or assignment the Buyer acknowledges and agrees that the terms and conditions hereunder shall remain binding upon the Buyer and the Guarantors and shall be enforceable against the Buyer and the Guarantors by the assignee or transferee of the Seller's interest as if the assignee or transferee were the Seller named herein.

## **23. DIRECTOR'S GUARANTEES**

- 23.1 In the event that the Buyer is a company or trustee, this Contract shall not be deemed to be final and binding upon the Seller and shall be voidable at the option of the Seller unless and until the form of Guarantee contained in Schedule 1 has been executed as a deed by the directors and principal shareholders of the Buyer or trustee, but notwithstanding that such Guarantee has not been executed this Contract shall be final and binding upon the Buyer. This clause has been inserted for the sole benefit of the Seller.
- 23.2 In the case where the original Buyer hereunder is the trustee of a trust the Buyer shall disclose the fact to the Seller prior to the execution of this Contract by the Seller and shall also provide the Seller with any other information which the Seller may require relating to the financial standing of the trust and in the absence of any such disclosure the Buyer shall be deemed to have purchased the property both in its own right and for the trust.

## **24. NAME OF DEVELOPMENT**

24.1 The Buyer acknowledges that the Seller shall be entitled to select any name for the development and Body Corporate of its own choosing, at any time, and to alter the same to another name, from time to time.

## **25. CAVEATS**

25.1 The Buyer must not lodge a caveat affecting the Land (or any part of it) or the Lot. The Buyer must ensure that its financier or any other person on their behalf complies with this clause.

## **26. CONTRACT EXECUTED AS A DEED**

26.1 Each party unconditionally signs, seals and delivers this Contract as a deed when executing this Contract so that the party has an intention to be immediately legally bound by this Contract.

26.2 Any imperfection in the execution of this document as a deed shall not affect the enforceability of this Contract as an agreement.

26.3 The Buyer acknowledges that the Contract, the Disclosure Statement and any documents to be signed by the Seller under the Contract may be signed by an attorney or agent appointed on the Seller's behalf.

## **27. EXCLUSIVE USES**

27.1 The Seller may include any proposed car space, storage space, courtyard or similar area marked on the plans contained in the Disclosure Statement or the Community Management Statement as part of the Lot or as an exclusive use subject to the next clause.

27.2 The Seller may elect to grant exclusive use of any car space, storage space, courtyard or other area designated as part of the Lot and in that event shall take all reasonable steps prior to and after the Settlement Date to ensure that the By-Laws will grant to the Proprietor for the time being of the Lot the exclusive use for such areas and the Buyer hereby consents to the making of such By-Laws and acknowledges that it will not be materially prejudiced by any such variation caused by any new Community Management Statement including such amended By-Laws. The Buyer shall raise no Objection should such new Community Management Statement not be registered as at the Settlement Date. The Seller may substitute car space areas provided that a car space area approved by the Local Authority is provided. The Buyer acknowledges that this clause is reasonably required by the Seller as:

- (i) it is required to comply with requirements of Local Authorities;
- (ii) from time to time the Scheme requires practical changes to be made;
- (iii) caretakers and letting agents of the Scheme from time to time require changes for the practical and efficient running of the Scheme;

27.3 Subject to this Clause, the Seller may at any time up to and including the date of termination of the Power of Attorney provided herein, cause the Body Corporate to grant rights of exclusive use to the owner for the time being of other lots in respect of any part of the Common Property, including areas for car spaces and courtyards, as well as occupation authorities and special rights and any moneys paid to the Seller shall belong to the Seller.

27.4 The Seller as original owner may allocate exclusive use of any car parking space or courtyard area to the owner for the time being of the Lot and shall make such allocation within 12 months after the recording of the Community Management Statement and give details of the allocation to the Body Corporate. For the purposes of the Act, the Buyer agrees to the allocation made.

## **28. RISK**

28.1 The Lot shall be at the risk of the Seller until settlement. However, if Plan registration has occurred at the Contract Date the risk passes to the Buyer from 5.00pm on the first day after the Contract Date.

## **29. FOREIGN INVESTMENT REVIEW BOARD**

29.1 Unless disclosed in item L of the Particulars, the Buyer warrants that:-

- (a) the Buyer is not a Foreign Person;
- (b) the Buyer may enter into this Contract and complete the purchase without obtaining approval from the Foreign Investment Review Board or that such consents or approvals as necessary have been given.

29.2 If the Buyer has disclosed that it is a Foreign Person, then this Contract is subject to the consent of the Treasurer and the following provisions apply:-

- (a) the Buyer must give to the Seller a statement showing the names, citizenship and ordinary residence of the Buyer and such other information and documentation reasonably required by the Seller;
- (b) the Buyer must make application for such consent at the Buyer's cost or in default the Seller may make such application in which case the Buyer:
  - (i) will upon demand pay to the Seller; and
  - (ii) indemnifies the Seller for,  
  
all costs associated with the Seller making the application, including the application fee.
- (c) despite the previous clause, the Seller is under no obligation to make the relevant application for consent referred to in this clause 29.2 and the Buyer will have no Claim against the Seller if the Seller chooses not to make the application;
- (d) if the consent is refused or is not obtained by the date that is 60 days from the Contract Date then either party may terminate this Contract and the Deposit shall be refunded to the Buyer;
- (e) For the removal of doubt, if the Seller has made the application for consent and consent is refused or is not obtained by the date referred to above, the Buyer is still liable to the Seller for all costs associated with the Seller making the application. The Seller is not required to reimburse or repay the Buyer any part of the costs it may incur.

29.3 At the time of signing this Contract, the Buyer must disclose in the relevant item of the Particulars its status in terms of the Foreign Acquisitions and Takeovers Act. If the Buyer is a company and/or a Trustee the Buyer must also provide to the Seller at the time of signing this Contract the names and addresses of the principal shareholders and/or beneficiaries. The Buyer warrants the accuracy of all information provided.

## **30. GST**

30.1 The Purchase Price is inclusive of GST (if any).

30.2 The Seller and the Buyer agree that the Seller shall apply the Margin Scheme as defined in Division 75 of the GST Act for any Supply provided by this Contract.

30.3 The Buyer acknowledges that the Seller does not warrant that the margin scheme can be applied and to the extent that the Seller cannot supply the margin scheme, the Buyer cannot Object or make any Claim.

- 30.4 The Buyer agrees it will not get any tax invoice.
- 30.5 The Seller gives notice to the Buyer in accordance with section 14-255(1) of the Withholding Law that the Buyer is required to make payment to the ATO under section 14-250 of the Withholding Law in relation to the Supply of the Lot.
- 30.6 The Buyer must pay to the ATO on or before the Settlement Date the amount of 7% of the Purchase Price or any such other amount determined in accordance with section 14-250 (6)-(8) of the GST Withholding Law ("GST Withholding Amount").
- 30.7 In accordance with section 14-255(1)(b) of the Withholding Law, the Seller advises as follows:
- (a) Seller's Name: NOVADECK PTY LTD A.C.N. 602 273 932.
  - (b) Seller's ABN; 65 602 273 932
  - (c) The Buyer must pay the amount of the GST Withholding Amount set out in item Q of the Reference Schedule being 7% of the Purchase Price in respect of the supply of the Lot in accordance with section 14-250 of the Withholding Law;
  - (d) The payment referred to in subsection (c) must be made on or before the Settlement Date;
  - (e) All of the consideration for the supply will be expressed as an amount of money. Section 14-255(1)(b)(iv) of the Withholding Law does not apply.
- 30.9 Prior to Settlement, The Buyer must:
- (a) Lodge a GST Property Settlement Withholding Notification Form with the ATO for each person comprising the Buyer;
  - (b) Lodge a GST Property Settlement Date Confirmation Form with the ATO for each person comprising the Buyer;
  - (c) Give the Seller a copy of the notification from the ATO specifying the Buyer's lodgement reference number and payment reference number and a copy of the GST Property Settlement Date Confirmation Form lodgement with the ATO.
- 30.10 The Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Deputy Commissioner of Taxation and deliver it to the Seller at settlement;
- 30.11 The Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- 30.12 The Buyer agrees clause 30.7 operates as notice in accordance with section 14-255(1)(b) of the Withholding Law and acknowledges receipt of that notice.

## **31. SUNSET DATE**

- 31.1 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, the later date), then either the Seller or the Buyer can terminate the Contract by written notice to the other party and all monies 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.
- 31.2 The Buyer may not terminate the Contract under clause 31.1 if settlement has not occurred by the Sunset Date as a result of the Buyer's default.



## **32. VARIATIONS TO THE DEVELOPMENT**

- 32.1 The Buyer acknowledges that the demands of prospective buyers may be such as to necessitate a change in the design, layout, number, size or positioning of the other lots to be created from the Land.
- 32.2 The Seller may change the design, layout, number, size or position of such lots in the development including the addition or removal of floors, carparks or services to or from the Building provided that the Lot retains the same amount of carparks and services. The Buyer acknowledges that this clause is reasonably required to protect the legitimate interests of the Seller to sell different lots to different buyers and will cause no detriment to the Lot.
- 32.3 The Buyer may not Object to any alteration made under this Clause.

## **33. FINANCE**

- 33.1 This Contract is not subject to the Buyer obtaining finance approval unless all particulars in item M are completed. If item M is completed, this Contract is subject to the Buyer obtaining from the Lender specified in item M on or before the Finance Approval Date approval of a loan not being less than the Amount of Loan specified in item M on terms satisfactory to the Buyer, acting reasonably.
- 33.2 The Buyer shall take all steps reasonably necessary to obtain such approval including making a written application to the Lender within 2 days of the Contract Date, and shall provide copies of all documents relating to any applications and the financiers response forthwith to the Seller if requested.
- 33.3 The Buyer must give notice to the Seller, by the Finance Approval Date that:
- (a) approval has not been obtained by the Finance Approval Date and the Buyer elects to terminate this Contract;
  - (b) the finance condition has been either satisfied or waived by the Buyer; or
  - (c) approval has not been obtained by the Finance Approval Date and the Buyer requests an extension to the Finance Approval Date.
- 33.4 The Seller may terminate this Contract if notice is not given under Clause 33.3(b) by 5.00pm on the Finance Approval Date.

## **34. DIVIDING FENCES**

- 34.1 The Seller is not liable to contribute to the construction of a dividing fence along any Lot and any adjoining land.

## **35. BUYER AS TRUSTEE**

- 35.1 If the Buyer is a trustee (whether or not disclosed in this Contract) the Buyer is bound under this Contract both personally and in its capacity as trustee.
- 35.2 The Buyer warrants to the Seller that:
- (a) it is the sole trustee under the relevant trust;
  - (b) it will disclose fully to the Seller the terms of the trust on request and it has disclosed the primary beneficiaries of the trust at Item P of the Reference Schedule;
  - (c) it possesses unqualified power under the trust to enter into this Contract to complete the purchase of the Lot;

- (d) any consent, approval or resolution necessary to enable it to enter and discharge its obligations under this Contract have been obtained or passed;
- (e) it holds its interest under this Contract :
  - (i) in the proper exercise of its power under the trust; and
  - (j) for the benefit of the beneficiaries or objects of the trust;
- (f) nothing referred to in clause 35.3 occurred prior to it entering into this Contract except as disclosed in writing to the Seller.

35.3 The Buyer must ensure that between the:

- (a) date of this Contract; and
- (b) final discharge of its obligations under this Contract,

any of the following events do not occur without the Seller's written consent (that consent not to be unreasonably withheld):-

- (c) amendment or revocation of the trust;
- (d) removal or retirement of the Buyer as trustee;
- (e) appointment of a new or additional trustee;
- (f) use of the trust assets for a beneficiary's own or an object's own purposes, unless pursuant to the terms of the trust;
- (g) distribution, resettlement or transfer of the trust assets;
- (h) anything that might result in the trustee's entitlement to indemnity from the trust assets or the beneficiaries being diminished;
- (i) acceleration of the vesting date or the termination of the trust; or
- (j) the Buyer as Trustee:
  - (i) incurring a debt;
  - (ii) lending money;
  - (iii) giving a guarantee or indemnity;
  - (iv) encumbering a trust asset;
  - (v) mixing trust assets;
  - (vi) compromising a claim in relation to any trust asset;
  - (vii) parting with possession of a trust asset;
  - (viii) delegating any of its trustee's powers or;
  - (ix) increasing its trustee remuneration

other than in the proper exercise of its duties under the Trust.

## **36. PRIVACY AND PERSONAL INFORMATION**

- 36.1 The Seller's policy is to comply fully with the requirements for the handling of personal information as set out in the *Privacy Act 1988 (Cth)* (as amended).
- 36.2 The Seller will provide to the Buyer, on request, access to the Buyer's personal information.
- 36.3 The Seller uses the Buyer's personal information for the purposes of providing the Seller's products and services to the Buyer, improving and marketing the Seller's products and services generally, and obtaining finance. The Seller may use the information to make further contact with the Buyer for the purposes of providing the Buyer with information on the Seller's range of products and services.
- 36.4 The Seller may disclose the Buyer's personal information as may be required to the Seller's consultants, related companies, contractors, financiers, credit providers, insurers, marketing agents, sales agents and staff and to any government body charged with the responsibility of recording transactions relating to the transfer of land.
- 36.5 The Seller may also disclose to a credit reporting agency pursuant to the *Privacy Act 1988 (Cth)* personal information relation to any application for finance or credit that the Buyer may make through or with the assistance of the Seller.
- 36.6 The Buyer hereby consents to the Seller using the Buyer's personal information in the Seller's absolute discretion, for the purposes, uses, and disclosures described in this clause 36, or in the Seller's opinion related to those purposes, and acknowledges that in providing consent to the disclosure and use of the Buyer's personal information, that such information may be utilised for any other authorised purpose under the *Privacy Act 1988 (Cth)*.

## **37. FACILITIES**

- 37.1 The Buyer acknowledges that the Facilities may be:
- (a) located on Common Property for the Scheme;
  - (b) the subject of allocations made by the Seller or subject to agreements in relation to the Facilities or encumbrances;
  - (c) available for the use and benefit of Owners as the Seller determines;
  - (d) constructed progressively and not be operational at Settlement; and
  - (e) 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).
- 37.2 The Buyer must not make any claim for compensation or damages or refuse to perform or purport to terminate this Contract because:
- (a) Facilities may be enjoyed by some Owners or in conjunction with or to the exclusion of some or all other Owners;
  - (a) an authorised allocation made by the Seller is made on conditions including that the relevant Owner meet liabilities for the allocated area;
  - (a) 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;
  - (a) Facilities not being operational or available at Settlement.

37.3 The Buyer releases the Seller from any claim arising out of or in connection with the matters referred to in clauses 37.1 or 37.2.

## **38. BUYER WARRANTIES**

38.1 The Buyer represents and warrants that:

- (a) it has full power and capacity to enter into this Contract;
- (b) it has the financial capacity to perform its obligations;
- (c) it does not require the consent of any third party to this Contract or to perform its obligations;
- (d) they are aware of the rights given to purchasers by sections 217-219 (inclusive) of the Act ;
- (e) that any alteration, variation or matter referred to in clause 13 of this Contract will not materially prejudice their position and the Buyer agrees to be bound by any such matters or alterations;
- (f) it has not relied on or been induced to enter into this Contract by any representation or warranty made by the Seller, a consultant of the Seller, an agent of the Seller or any other person other than as expressly set out in this Contract;
- (g) it has relied on its own independent investigations and enquiries about the Scheme, the development and the Lot in entering into this Contract;
- (h) it has had the opportunity to obtain independent legal, financial, taxation and accounting advice in relation to the Lot and this Contract; and
- (i) the Buyer was not introduced to the lot by any person other than the Agent.

38.2 The Buyer agrees that information in brochures, models or other material of any description in connection with the sale of the Lot are indicative only and are not to be relied on or if relied on, the Buyer acknowledges that it elects to do so at its own risk and with full understanding that the Lot and Scheme may vary from the information in those items as represented in any of them, in accordance with the terms of this Contract. Where there is any inconsistency between plans, the sizes, dimensions and measurements on the draft survey plan contained in the Disclosure Statement (as amended from time to time) prevails.

38.3 The Buyer acknowledges and agrees that it has had the opportunity, prior to signing this Contract, to obtain an independent valuation in relation to the Lot and that no representations or warranties about the likely value of the lot at completion has been made by the Seller, a consultant of the Seller, an agent of the Seller.

38.4 The Buyer acknowledges and agrees that it had the opportunity to investigate the Land and the financial viability and/or performance of any investment in the Lot prior to signing this Contract and during the statutory 5 day cooling off period.

## **39. SERVICE CONTRACTS**

39.1 Arrangements with service contractors for the provision of services to the Scheme may not have been concluded at the date of this Contract. The Seller may be required or consider it necessary to:-

- (a) enter into service contracts or cause the Body Corporate to enter into service contracts including those that are contained in the Disclosure Statement;
- (b) change or cause a change to those service contracts;

for the construction operation and management of the Scheme and to comply with any approvals or requirements of government agencies.

39.2 The Seller may require a novation or acceptance by the Body Corporate of any service contract or other arrangements established by the Seller for the better operation and management of the Scheme and to comply with any approvals or requirements of government agencies.

39.3 The Buyer acknowledges and agrees that the Seller may sell the Management Rights for the Scheme and will be entitled to retain the sale proceeds on any such sale.

#### **40. TIME OF THE ESSENCE**

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

#### **41. NOTICES**

41.1 Notices under this Contract must be in writing and may be given by a parties Solicitor.

41.2 Notices are effectively given if;

- (a) delivered or posted to the other party or its Solicitor; or
- (b) sent to the facsimile number of the other party or its Solicitor.

41.3 Posted notices will be treated as given two Business Days after posting.

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

41.5 Notices given after 5pm will be treated as given on the next Business Day.

41.6 Notices or other written communication by a party's Solicitor will be treated as given with that party's authority.

#### **42. ENTIRE AGREEMENT**

42.1 This Contract:

- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Contract
- (b) supercedes any prior agreement or understanding on anything connected with that subject matter.

42.2 Each party has entered into this Contract without relying on any representation by any other party or any person purporting to represent that party, save those representations which are expressly contained in this Contract and the Disclosure Statement.

42.3 The Buyer confirms and acknowledges that it has obtained its own independent financial and accounting advice in relation to the purchase of the Lot and in relation to the affects of any Goods and Services Tax that may be applicable.

42.4 No warranties are given by the Seller or its agents as to the value of the Lot at Settlement or as to the Buyer's ability to sell the Lot before the Settlement Date.

#### **43. DUTIES AND COSTS**

43.1 The Buyer must pay all duty on this Contract. Each party shall pay their own costs of and incidental to this sale and purchase.

#### **44. FURTHER ASSURANCE**

44.1 Each party must promptly and at its own cost do all things including executing all documents necessary or desirable to give full effect to this Contract.

#### **45. SEVERABILITY**

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

#### **46. NO MERGER**

46.1 Despite the expiration or termination of this Contract, any provisions which can take effect after the expiration or termination of this Contract will continue to do so.

#### **47. VARIATION**

47.1 An amendment or variation to this Contract is not effective unless it is in writing and signed by all parties.

#### **48. GOVERNING LAW**

48.1 The Law of Queensland governs this Contract. In the event of any dispute or disagreement, the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Queensland and all Courts having appellate jurisdiction from those Courts.

#### **49. NO WAIVER**

49.1 No delay or omission to exercise any right accruing to the Seller will be deemed a waiver of any continuing breach by the Buyer or a waiver of any future similar breach. To be effective any waiver by the Seller must be in writing and shall only be effective to the extent specified.

#### **50. MANAGED INVESTMENTS**

50.1 The Buyer expressly acknowledges that:

- (a) the Lot is part of the Building to be occupied by owner occupiers and long term tenants;
- (b) the Letting Agent appointed by the Body Corporate is not offering or intending to operate a serviced apartment complex;
- (c) it is free to reside in the Lot or let it out to tenants;
- (d) should the Buyer let the Lot to tenants:
  - (i) it does not have to appoint the Letting Agent to manage the tenancy;
  - (ii) the likely return from the letting of the Lot is not dependent upon the performance of the Letting Agent;
  - (iii) any tenant will most likely be a long term tenant of six to twelve months duration;
  - (iv) there will be no pooling of rentals received or common enterprise with other lot owners in the Scheme.

- 50.2 In reliance on this acknowledgement, the Seller enters into this Contract and will obtain funding for the development of the Building on this basis.
- 50.3 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..

## **51. DISCLOSURE BY BUYERS**

- 51.1 The Buyer confirms that they will disclose to all parties such as financiers of the Buyer, full and complete details of any rebate, concession or discount against the Purchase Price afforded to the Buyer whether detailed in the Contract or otherwise so as to ensure that any interested party is fully appraised and does not misunderstand the financial terms of the Contract and any associated arrangements (if any) between the Buyer and the Seller. The Buyer confirms that any declaration it makes with respect to the Contract or the transfer documents will be true and correct and complete in every respect, including in relation to any rebate, concession, discount or other discount against the Purchase Price. The Buyer's consent to the Seller disclosing any rebate, concession, discount or other valuable consideration to any financier of the Buyer or similar interested party.

## **52. SERVICE LOCATION DIAGRAM**

- 52.1 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.
- 52.2 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.
- 52.3 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 not Objection as a result of the material contained in the services location diagram of the Community Management Statement updated in accordance with this clause.

## **53. BUDGETS**

- 53.1 The Seller has caused the preparation of an administrative fund budget and a sinking fund budget for the first year of the operation of the Scheme. These budgets are contained in the Disclosure Statement.
- 53.2 The Seller does not warrant the accuracy of the budgets and the Buyer is not entitled to make any Objection or claim for compensation or refuse to settle or delay settlement as a result of any change to the budgets.

## **54. SELLER AS TRUSTEE**

- 54.1 This clause only applies where the Seller is a Trustee.
- 54.2 The Seller enters into this Contract only in its capacity as trustee of the trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Seller only to the extent to which it can be satisfied out of property of the trust of which the Seller is actually indemnified for the liability. This limitation of the Seller's liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Seller in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.

- 54.3 The parties other than the Seller may not sue the Seller personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Seller or prove in any liquidation, administration or arrangement of or effecting the Seller.
- 54.4 The provisions of this clause shall not apply to any obligation or liability of the Seller to the extent that it is not satisfied because under the trust deed establishing the trust or by operation of law, there is a reduction in the extent of the Seller's indemnification out of the assets of the trust, as a result of the Seller's fraud, negligence or breach of trust.

## **55. REPRESENTATION ON VIEWS**

- 55.1 The Buyer acknowledges and represents to the Seller that:
- (a) It has not received any representations as to views from the Seller;
  - (b) If it has received any representations as to views, it has received them from other parties who may or may be designated as any agent of the Seller ("Third Party");
  - (c) The Third Party making such representation has no authority from the Seller whatsoever to make those representations;
  - (d) The Buyer does not, and will not rely on such representation;
  - (e) The Buyer will not join the Seller to any proceedings as a result of such representations;
  - (f) The Buyer will not raise any representation in any proceeding involving the Seller, including in any defence or counter claim involving the Seller;
  - (g) If any Third Party has made any representation on views, the Buyer will indemnify the Seller in respect of any loss or damage arising from such representation, including legal costs on a solicitor and own client basis for any legal proceedings, including Claims by the Seller for specific performance of this Contract and or for forfeiture of the Deposit; and
  - (h) The Third Party was not acting within any authority from the Seller, whether actual, implied or ostensible and that any representations as to views are solely representations from a Third Party and there is no agency between the Seller and any Third Party.

## **56. POOL SAFETY CERTIFICATE**

- 56.1 The Buyer acknowledges that any proposed shared pool to be built within the Scheme is not capable of receiving a Pool Safety Certificate at the time of entering into this Contract and further acknowledges receipt of a Notice of No pool safety certificate prior to entering into this Contract.

## **57. COUNTERPARTS**

- 57.1 The parties consent and agree to this Contract being sent, received and signed electronically (by email or fax).
- 57.2 This Contract may be executed by a number of counterparts. Each counterpart constitutes an original of this Contract, all of which together constitute one instrument. The Party who has executed the counterpart of this Contract may exchange it with another party by transmitting by electronic means (including by email or facsimile) the executed counterpart to the other party or the other party's solicitor or agent and if requested by the other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this Contract.

## **58. USE OF DOCUSIGN**



- 58.1 This Contract may be validly created by counterparts electrically signed by each party using DocuSign or by a combination of both DocuSign and hard-copy counterparts, and the counterparts taken together shall be binding and constitute the one document. and shall together be deemed to constitute one and the same instrument. To avoid any doubt, the parties agree they may, but are not required, to execute the contract electronically.
- 58.2 It is agreed that the delivery of a counterpart of the contract bearing an electronic signature shall be deemed to bind the party whose signature is so represented.
- 58.3 For the avoidance of doubt, no witnessing of a party's signature is required if using DocuSign.
- 58.4 The parties agree to be bound by copies of this contract which have been electronically signed using DocuSign in accordance with this Special Condition.
- 58.5 The parties agree that they will be bound by, have complied with and will comply with the Electronic Transactions (Queensland) Act 2001, in relation to the execution of this Contract.
- 58.6 In the event the Contract has been entered into using DocuSign by a company as purchaser, the following provisions will apply, but are otherwise of no effect:
- (a) the Buyer will procure the directors of the Buyer to execute a Guarantee as a Deed in accordance with the attached Annexure A and provide the fully signed original Guarantee to the Seller within 14 days of the Contract Date;
  - (b) the Buyer will procure the directors of the Buyer to execute a Deed Poll – Power of Attorney in accordance with the attached Annexure B and provide the fully signed original deed Poll to the Seller within 14 days of the Contract Date, failing which the Seller may terminate this Contract by notice in writing to the Buyer.
- 58.7 If the Buyer as failed to provide a binding Guarantee or Deed Poll in accordance with clause 64.6 of the Contract, the Seller may terminate this Contract by notice in writing to the Buyer, and in that event the matter will be at an end.
- 58.8 Unless the context otherwise requires:

**“DocuSign”** means the DocuSign electronic signature software platform for the electronic execution of documents.

**ANNEXURE A – GUARANTEE**

**(Only if clause 64.6 applies)**

**DEED POLL - GUARANTEE**

FROM: THE PARTIES REFERRED TO IN THE TABLE IN CLAUSE 1.1  
("Guarantors")

TO: NOVADECK PTY LTD A.C.N. 602 273 932 ("Seller")

RE: DIRECTOR'S GUARANTEE - PURCHASE OF A LOT IN STANWORTH RESIDENCES  
COMMUNITY TITLES SCHEME

**INTRODUCTION:**

- A. The Seller is developing the Stanworth Residences Community Titles Scheme ("Scheme") on land having real property description lot 1 on RP 209072, lot 4 on RP209073 & lot 7 on RP 209074, title references 16967099, 17041202 & 17089222 located at 97-107 Stanworth Road, Boondall, Qld ("Base Parcel").
- B. The Buyer entered into a contract on the Contract Date for the purchase of the Lot in the Scheme from the Seller to be created from the Base Parcel ("Contract").
- C. The Guarantors are the directors and principal shareholders of the Buyer.
- D. In accordance with the Contract, the Buyer is required to provide a Guarantee in favour of the Seller executed as a deed by the directors and principal shareholders of the Buyer or trustee,
- E. In order for the Buyer to comply with the terms of the Contract, the Guarantors have agreed to enter into this Deed Poll ("Guarantee") in favour of the Seller.

**1. GUARANTEE**

1.1 In consideration of the Seller entering into the Contract with the Buyer on the Contract Date for the Buyer to purchase the Lot from the Seller, we, the Guarantors:

Name	
Address	

and

Name	
Address	

provide this Guarantee to the Seller on the following terms:

- 1.2 The Guarantors jointly and severally guarantee to the Seller the performance by the Buyer of all of its obligations under the Contract.
- 1.3 The Guarantors indemnify the Seller against any liability arising because the Buyer does not perform its obligations or keep its promises under the Contract.
- 1.4 The Guarantors promises are not affected by any of the following:
- (a) the Seller giving the Buyer time to pay;
  - (b) the Seller agreeing to change this Contract;
  - (c) the Seller delaying in exercising its rights;
  - (d) the Seller failing to exercise its rights on a previous occasion;
  - (e) the Seller granting of any other time or indulgence to the Buyer or Guarantors;
  - (f) the insolvency of the Seller, Buyer or any Guarantor;
  - (g) the Buyers obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
  - (h) failure by the Seller to give notice to the Guarantor of any default by the Buyer under the Contract;
  - (i) any legal imitation, disability, incapacity or other circumstances related to the Buyer;
  - (k) the Seller accepting a compromise, payment or settlement from one of the Guarantors (save that a credit for any payment actually received shall be given).
- 1.5 This Guarantee shall be a continuing guarantee until the whole of the guaranteed monies are paid.
- 1.6 The Seller may agree to grant to the Buyer or any Guarantor any release, consent or discharge and may vary any of the terms of the Contract without notice to or the consent of any other Guarantor or the Buyer without affecting or discharging the liability of the Guarantors
- 1.7 This Guarantee shall be binding on each of the Guarantors who sign it notwithstanding that any one or more of the Guarantors named herein may not have signed or may never sign this Guarantee. The Guarantors do not execute this Guarantee as a result of or by reason of any promise representation, statement or information of any nature or kind whatsoever given or offered to them by or on behalf of the Seller which is not contained in the Contract.
- 1.8 In the event that the seller shall transfer or assign all its interest in the Land or Lot, this Guarantee shall remain in full force and affect and shall be enforceable against the Guarantors by such transferee or assignee as if such transferee or assignee were the Seller named herein.
- 1.9 This Guarantee is a principle obligation and is not to be treated as auxiliary or collateral to any other right or obligation however created or arising.
- 1.10 In this Guarantee the expression "insolvency" includes administration, bankruptcy, compromise arrangement, amalgamation, receivership, reconstruction, winding up, liquidation, dissolution and assignment for or compromise with the creditors and "insolvent" is to be construed accordingly.
- 1.11 The Defined Terms in the first column of Schedule 1 have the corresponding definition as contained the second column of Schedule 1.

1.12 The definitions contained in the Contract shall apply to this Guarantee.

**This Guarantee is dated the**

**day of**

**2020**

Signed, sealed and delivered by ]  
the said ]  
as Guarantor in the presence of ]

A witness

Full name of witness

Signed, sealed and delivered by ]  
the said ]  
as Guarantor in the presence of ]

A witness

Full name of witness

**SCHEDULE 1**

<b>DEFINED TERM</b>	<b>DEFINITION</b>
<b>Buyer(s)</b>	
<b>Contract Date</b>	
<b>Lot</b>	Proposed Lot                      on the Plan

## **ANNEXURE B – POWER OF ATTORNEY**

**(Only if clause 64.6 applies)**

FROM:

(“Buyer”)

TO: NOVADECK PTY LTD A.C.N. 602 273 932 (“Seller”)

RE: POWER OF ATTORNEY - STANWORTH RESIDENCES COMMUNITY TITLES SCHEME

### **INTRODUCTION:**

- A. The Seller is developing the Stanworth Residences Community Titles Scheme on land having real property description lot 1 on RP 209072, lot 4 on RP209073 & lot 7 on RP 209074, title references 16967099, 17041202 & 17089222. located at 97-107 Stanworth Road, Boondall Qld (“Scheme”)
- B. The Buyer has entered into a contract for the purchase of a lot in the Scheme (“Contract”).
- C. In accordance with the Contract, the Buyer is required to grant the Seller a power of attorney and sign the power of attorney as a Deed.
- D. In order to comply with the terms of the Contract, the Buyer has agreed to enter into this Deed Poll

### **1. POWER OF ATTORNEY**

- 1.1 The Buyer irrevocably appoints the Seller and the directors of the Seller jointly and severally as the attorneys of the Buyer to perform, to the exclusion of the Buyer, the following acts;
  - (a) attend and/or vote in the name of the Buyer at meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to in Clause 1.2;
  - (b) complete, sign and lodge a voting paper or other document (including a corporate owner nominee appointment form or representative appointment form and any notice under the Regulation Module) to allow the Seller to vote in the name of the Buyer at all meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to below; and/or
  - (c) complete, sign and lodge any written consent pursuant to section 171 of the Act as may be required to pass any exclusive use by laws to allocate exclusive use areas in the Scheme, consequent upon the establishment of a new Scheme.
- 1.2 The motions or resolutions in respect of which the Seller is appointed the attorney of the Buyer to the exclusion of the Buyer are the following:
  - (a) consent to the recording of a new Community Management Statement to facilitate the progressive development of the Scheme and the Land identified in this Contract and all alterations, modifications or adjustments (including adjustment of the contribution schedule lot entitlements and the interest schedule lot entitlements and the creation of additional Common Property) which are necessary for the Seller to develop the Land;

- (b) the re subdivision of any lot owned by the Seller in the Scheme to create additional lots and Common Property;
- (c) consent to the recording of a new Community Management Statement to implement the development of the Scheme and the Land proposed by this Contract or the Community Management Statement currently in force;
- (d) consent to the recording of a new Community Management Statement to record allocations under any exclusive use bylaw or to record any additional or replacement exclusive use bylaw to allocate exclusive use areas in the Scheme;
- (e) consent to the affixing of the seal of the body corporate to all forms required to be lodged in the DNRM;
- (f) consent to the grant of any easement, lease, licence or occupation authority referred to in this Contract;
- (g) consent to any appeal to any Court deemed appropriate by the Body Corporate;
- (h) the engagement of a person as a Body Corporate manager or service contractor, or authorising a person as a letting agent including the engagement of the Body Corporate manager and the engagement and the authorisation of a manager as disclosed in this Contract;
- (i) the fixing, adoption, variation or ratification of budgets or contributions to be levied by the Body Corporate;
- (j) the composition and/or election of the members of the committee of the Body Corporate;
- (k) a proposal that there shall be no prohibition or restriction on the use of proxies by the original owner;
- (l) an application to be made for an order of an adjudicator under the Act;
- (m) any appeals to be lodged pursuant to the Act;
- (n) the commencement of a proceeding pursuant to the Act;
- (o) the issue of an authorisation to the owner of a lot (including the original owner) to make any improvement contemplated under the Regulation Module including the installation, erection and /or construction of air conditioning equipment, enclosing of carports, construction and installation of storage areas, pergolas, fencing, screening, shutters, security devices or any other associated apparatus and awnings;
- (p) the exercise of any right of the Seller under this Contract;
- (q) any acts or things required of the Body Corporate;
- (r) to elect or appoint Committee Members and Body Corporate Representatives to any Principal Body Corporate;
- (s) the amalgamation or subdivision of any lot owned by the Seller;
- (t) consent to the recording of a Building Management Statement (if any);
- (u) to do any and all things necessary to effect any future stage of the development;
- (v) to execute any agreement contained in the Disclosure Statement for the Body Corporate;

(w) to vote on behalf of the Buyer at all meetings of the Body Corporate and the Committee of the Body Corporate to the maximum extent permissible by law;

(x) for all purposes of and incidental to those matters outlined above.

- 1.3 The Buyer agrees to ratify and confirm all the acts, deeds and things done or performed under this Power of Attorney. If directed to do so by the Seller at any time, the Buyer must, at the Buyer's expense, take all steps available in order give full effect to the Power of Attorney including signing and completing any further instrument provide by the Seller.
- 1.4 While this Power of Attorney remains in force, the Buyer must not transfer or assign the Lot other than to a transferee or assignee who has first agreed to be bound by the provisions of this Clause in a deed and in a form reasonably required by the Seller and who has executed a Power of Attorney in favour of the Seller and its directors in the same terms as this Clause.
- 1.5 The Buyer will not grant a mortgage of the lot without first providing a copy of the Contract and this Deed Poll to its mortgagee and procuring the mortgagees agreement to be bound by the provisions of this Clause.
- 1.6 If for any reason the Seller is unable to exercise the rights granted to it by this Clause the Buyer must exercise its rights to vote as the Seller directs but only in relation to the matters set out in the Power of Attorney contained in the Disclosure Statement.
- 1.7 As far as it is lawful, the rights of the Seller under this clause can be exercised in the Seller's total discretion and to exclusion of the Buyer without limitation, the rights of the Seller under this clause can be exercised:-
  - (a) even if the exercise involves a conflict of interest or duty; or
  - (b) even if the attorney has a personal interest in doing so.
- 1.8 This Power of Attorney is given pursuant to section 10 of the Powers of Attorney Act 1988 (Qld) and is given by the Buyer as security for the proprietary interest of the Seller and the performance of its obligations to the Seller and is irrevocable.
- 1.9 This Power of Attorney is irrevocable for a period of one (1) year after the Community Titles Scheme is established or changed, whichever is the longer.
- 1.10 Any defined term in the Contract has the same meaning in this Deed Poll



## SCHEDULE 1

### GUARANTEE

In consideration of the Seller entering into a contract of sale (the "Contract") with the Buyer for the Buyer to purchase the Lot from the Seller, we

Name	
Address	

and

Name	
Address	

**("the Guarantors")**

provide this Guarantee to the Seller on the following terms:

1. The Guarantors jointly and severally guarantee to the Seller the performance by the Buyer of all of its obligations under the Contract.
2. The Guarantors indemnify the Seller against any liability arising because the Buyer does not perform its obligations or keep its promises under the Contract.
3. The Guarantors promises are not affected by any of the following:
  - (a) the Seller giving the Buyer time to pay;
  - (b) the Seller agreeing to change this Contract;
  - (c) the Seller delaying in exercising its rights;
  - (d) the Seller failing to exercise its rights on a previous occasion;
  - (e) the Seller granting of any other time or indulgence to the Buyer or Guarantors;
  - (f) the insolvency of the Seller, Buyer or any Guarantor;
  - (g) the Buyers obligations or any part of them being or becoming wholly or partially illegal, void, voidable or unenforceable;
  - (h) failure by the Seller to give notice to the Guarantor of any default by the Buyer under the Contract;
  - (i) any legal imitation, disability, incapacity or other circumstances related to the Buyer;
  - (j) the Seller accepting a compromise, payment or settlement from one of the Guarantors (save that a credit for any payment actually received shall be given).

4. This Guarantee shall be a continuing guarantee until the whole of the guaranteed monies are paid.
5. The Seller may agree to grant to the Buyer or any Guarantor any release, consent or discharge and may vary any of the terms of the Contract without notice to or the consent of any other Guarantor or the Buyer without affecting or discharging the liability of the Guarantors
6. This Guarantee shall be binding on each of the Guarantors who sign it notwithstanding that any one or more of the Guarantors named herein may not have signed or may never sign this Guarantee. The Guarantors do not execute this Guarantee as a result of or by reason of any promise representation, statement or information of any nature or kind whatsoever given or offered to them by or on behalf of the Seller which is not contained in the Contract.
7. In the event that the seller shall transfer or assign all its interest in the Land or Lot, this Guarantee shall remain in full force and affect and shall be enforceable against the Guarantors by such transferee or assignee as if such transferee or assignee were the Seller named herein.
8. This Guarantee is a principle obligation and is not to be treated as auxiliary or collateral to any other right or obligation however created or arising.
9. In this Guarantee the expression "insolvency" includes administration, bankruptcy, compromise arrangement, amalgamation, receivership, reconstruction, winding up, liquidation, dissolution and assignment for or compromise with the creditors and "insolvent" is to be construed accordingly.
10. The definitions contained in the Contract shall apply to this Guarantee.

**This Guarantee is dated the** \_\_\_\_\_ **day of** \_\_\_\_\_ **202**

Signed, sealed and delivered by \_\_\_\_\_ ]  
the said \_\_\_\_\_ ]  
as Guarantor in the presence of \_\_\_\_\_ ]

A witness

Full name of witness

Signed, sealed and delivered by \_\_\_\_\_ ]  
the said \_\_\_\_\_ ]  
as Guarantor in the presence of \_\_\_\_\_ ]

A witness

Full name of witness

**IN WITNESS WHEREOF** these presents have been executed upon the day and year first hereinbefore written.

**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 ]  
]   
as Buyer this                    day of ]  
202    in the presence of:            ]

A witness

Full name of witness

**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 ]  
]   
as Buyer this                    day of ]  
202    in the presence of:            ]

A witness

Full name of witness

**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 ]  
]   
as Buyer in accordance with section 127 ]  
of the Corporations Act 2001 (Cth)    ]  
this            day of                    202    ]  
in the presence of                            ]

A witness

Full name of witness

If required, affix seal here

Signed, sealed and delivered by ]  
Novadeck Pty Ltd A.C.N. 602 273 932 ]  
as Seller in accordance with section 127 ]  
of the Corporations Act 2001(Cth) ]  
this            day of            202 ]  
in the presence of: ]

A witness

Full name of witness

If required, affix seal here

Signed, sealed and delivered by the Seller by ]  
its duly appointed attorney, Scott Orville ]  
Jenkinson / John Patrick Warlow / Andrew Colin ]  
Pye under Power of Attorney ]  
who declares he has received no notice of ]  
revocation thereof, in the presence of ]

A witness

Full name of witness