

# Ashford Land

## CONTRACT - REFERENCE SCHEDULE

### Contract Date

### Buyer

Buyer 1 name

Buyer 1 date of birth / /

Buyer 2 name

Buyer 2 date of birth / /

A.C.N.

name of trust

address

telephone

email

### Buyer's Solicitor

name

address

telephone

email

fax

### Personal Use

Property being acquired for investment purposes (**Non-Personal Use**)

Property being acquired for owner occupier purposes (**Personal Use**)

[Tick as applicable. If not completed, assumed Non Personal Use.]

### Foreign Interest

NO  YES

[Tick as applicable. If not completed, Buyer assumed not a Foreign Interest.]

Nationality if Foreign:

### Property

address

Lot No. \_\_\_\_\_ **Ashford Land** situated at 50 Ashmore Street, Everton Park, Qld 4053.

description

The proposed community title lot \_\_\_\_\_ as shown on the Identification Plan contained in the Disclosure Documents (**Lot**).

### Price

\$

**Total Deposit**

\$

payable to HWL Ebsworth, Lawyers;

**Initial Deposit**

\$

payable on the signing of this Contract; and

**Balance Deposit**

\$

payable within 14 days after the Contract Date.

### Guarantor

[IF BUYER IS A COMPANY]

Guarantor 1 Name

Guarantor 1 Address

Guarantor 2 Name

Guarantor 2 Address

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.

### Buyer's Signature

SIGNED by the Buyer in the presence of (and if a company, in accordance with Sections 126 or 127 of the Corporations Act 2001 (Cth) or by its duly authorised signatory):

)  
)  
)  
)

Buyer (or Director of Buyer or authorised signatory, if company).

Buyer (or Director of Buyer or authorised signatory, if company).

Witness

(witness not required if signed electronically)

Buyer (or Director/Secretary of Buyer or authorised signatory, if company)

The signatories, by placing their signatures above, warrant that:

- they are the Buyer or they are authorised by the Buyer to sign; and
- if an officer of a company, the company duly resolved to enter into and sign this Contract.

# IMPORTANT NOTICE TO BUYER

## Depositing Funds into HWL Ebsworth Trust

1. HWL Ebsworth receives dozens of transfers and direct deposits into our Trust Account every day.
2. It is imperative that we know what the funds are paid for so that they can be properly receipted and applied.
3. If we can't identify and receipt a deposit into our Trust Account, it may lead to delay in progressing your matter.

## Matter Reference

4. When transferring or depositing funds into our Trust Account, **it is imperative** that you include a reference which has:
  - (a) your name (as per the Contract);
  - (b) the lot number you are buying; and
  - (c) the development name.

**For example: *Smith: Lot 101: Ashford Land***

### IMPORTANT

Immediately after you have transferred or deposited the funds into our Trust Account, **send us a fax or an email with a copy of the transfer or deposit receipt**. The relevant email address and fax number are listed in the Reference Schedule of the Contract.

## Trust Account Details

5. Our Trust Account details are as follows:

|                    |                                                 |
|--------------------|-------------------------------------------------|
| HWL Ebsworth ABN:  | 37 246 549 189                                  |
| Bank Account Name: | HWL Ebsworth Lawyers Law Practice Trust Account |
| Bank:              | Westpac Banking Corporation                     |
| Address:           | 388 Queen Street, Brisbane, QLD 4000            |
| BSB:               | 034 003                                         |
| Account:           | 24 66 34                                        |
| Swift Code:        | WPACAU2S                                        |



**SPECIAL CONDITIONS**  
(Insert any Special Conditions here)

DRAFT

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**Buyer 1 Initials**

**Buyer 2 Initials**

**Seller's Initials**

# CONTRACT TERMS

## A MEANING OF TERMS

### 1. Reference Schedule

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

### 2. Disclosure Documents

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

### 3. BCCM Act

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

### 4. Definitions

In this Contract, unless the context otherwise indicates:

**ADI** has the meaning given in the *Banking Act 1959 (Cth)*.

**Authority** means any body (including any judicial body), government, person or otherwise having or exercising control over the approval of, carrying out of, use or operation of the Principal Scheme, the Scheme or the Property (or any part or proposed part of them) including any services to be provided to them.

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

**Bank** means an ADI that is permitted under section 66 of the *Banking Act 1959 (Cth)* to call itself a bank or a bank constituted under a law of a State of Australia.

**Bank Cheque** means a cheque issued or drawn by an ADI on itself.

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

**Body Corporate** means the body corporate created under Section 30 of the BCCM Act upon establishment of the Scheme.

**Body Corporate Agreements** means any proposed service contractor's agreements, letting authorisation agreement and possibly other agreements to be entered into by the Body Corporate when the Scheme is established (or continued when the Scheme is changed), draft copies of which are contained in the Disclosure Documents. If the Scheme is already established, these agreements may have already been entered into by the Principal Body Corporate.

**Building Covenants** means the building covenants included in the Disclosure Documents (as amended or updated from time to time).

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

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

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

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

**Committee** means the committee of the Principal body Corporate or the Body Corporate.

**Common Property** means, as the context requires, the common property of the:

- (a) Principal Scheme; or
- (b) Scheme.

**Community Management Statement** means, as the context requires, the community management statement recorded in order to;

- (a) establish the Scheme, or
- (b) change the Scheme on the addition of a further stage.

**Compliant Bank Guarantee** means a guarantee or undertaking by a Bank acceptable to the Seller, which:

- (a) is for the amount of the Deposit;
- (b) is issued in favour of the Deposit Holder as "Favouree" (as opposed to specifying the Seller as Favouree);
- (c) specifies that the Seller has agreed to accept the guarantee or undertaking instead of payment of a cash deposit;
- (d) requires the bank to pay the Deposit Holder the Deposit amount immediately on presentation of the guarantee or undertaking without first checking with the Buyer or any other person;
- (e) has no expiry date and is expressed to be unconditional and irrevocable;
- (f) contains the names of the Seller and the Buyer (and no other third party) and makes reference to this Contract and the sale made under it, eg:

**MIRVAC QUEENSLAND PTY LTD ACN  
060 411 207 sale of lot [No.] Ashford  
Land to [Buyer's Name]; and**

- (g) is otherwise on terms and conditions and in a form satisfactory to the Seller and any Seller's financier.

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

**Contract** means this contract document.

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

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

**Dealing** has the meaning given in clause 84.1 concerning **Assignment**.

**Deed Poll** means the Deed Poll for the Building Covenants accompanying this Contract document.

**Deposit** means the Total Deposit (which comprises the Initial Deposit and the Balance Deposit) shown in the Reference Schedule.

**Deposit Bond** means a bond or other surety (however described) that is:

- (h) from an insurance company or other institution acceptable to the Seller;
- (i) in a form acceptable to the Seller in its discretion;
- (j) for an amount equal to the Deposit; and
- (k) payable on demand.

**Digitally Sign** has the meaning in the ECNL.

**Disclosure Documents** means the documents titled **Disclosure Documents** or similar given or delivered to the Buyer before formation of this Contract.

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

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

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

**Electronic Settlement** means settlement facilitated by the Platform.

**Electronic Workspace** means a shared electronic workspace within the Platform that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement by way of electronic addresses for service of notices and for written communications.

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

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

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

**Financial Settlement** means the exchange of value between financial institutions in accordance with the Financial Settlement Schedule.

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

**Foreign Interest** means any person within the definition of **foreign person** in FATA.

**Further Statement** means a further statement for the purposes of Section 214 of the BCCM Act.

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

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

**Guarantee** means the Guarantee and Indemnity accompanying this Contract document.

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

**Interest** means any interest earned on the investment of a cash Deposit.

**Latest Date** means **31 December 2020**.

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

**Lot Entitlement** means the contribution or interest entitlement (as the context requires) of a lot included in the:

- (a) Principal Scheme as specified in the Principal CMS; or
- (b) Scheme as specified in the Community Management Statement.

**Name** means the name or intended name of the;

- (a) Principal Scheme being **Ashford Principal**; and
- (b) Scheme being **Ashford Land**.

**NBN Co** means any one or more of NBN Co Limited ABN 86 136 533 741 or any related body corporate or related entity to it.

**Non-Compliant Guarantee** means a:

- (a) Deposit Bond; or
- (b) a guarantee or undertaking by a Bank that is not a Compliant Bank Guarantee.

**Notice** means:

- (a) any notice, request, direction or other communication to be given under or in relation to this Contract; or
- (b) any statement, notice or disclosure required by any law to be given in relation to this Contract or the transactions evidenced by it (including statements under sections 213 and 214 of the BCCM Act).

**Novation Deed** means a deed (in a form reasonably required by the Seller) to be made in relation to a Dealing and under which, on and from completion of the Dealing, the Third Party covenants in favour of the Buyer to be bound by the obligations of the Seller under this Contract.

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

- (a) object to a Variation;
- (b) object to Title;

- (c) avoid or attempt to avoid this Contract;
- (d) refuse to effect Settlement;
- (e) delay Settlement;
- (f) make any Claim, whether before or after Settlement, including a claim for damages or compensation or any reduction in the Price;
- (g) retain any part of the Price;
- (h) require the Seller to carry out any works;
- (i) withhold a consent;
- (j) seek an injunction; or
- (k) to object indirectly, for example, through participation as a member of the Body Corporate.

**Outgoings** means:

- (a) rates, charges or levies on the Principal Scheme Land, the Scheme Land or the Lot by any Authority (including rates, water charges, fire service levies etc);
- (b) land tax;
- (c) Body Corporate levies; and
- (d) Principal Body Corporate and Body Corporate and building insurances paid by the Seller.

**Parties** means the Seller and Buyer.

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

**Permitted Variation** means a Variation which, viewed objectively, does not:

- (a) have a material adverse effect on the use or value of the Property; and
- (b) result in the Property being substantially different to that depicted in any Promotional Materials, the Contract and the Disclosure Documents.

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

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

**Platform** means any bona fide system operated for settlement of conveyancing transactions and lodgement of Queensland Land Registry documents by a party approved as an Electronic Lodgement Network Operator under section 15 of the ECNL, including the system operated by Property Exchange Australia Ltd.

**Power of Attorney** means appointment of the Seller (and its representatives) by the Buyer as the Buyer's attorney pursuant to the clause 58 **Power of Attorney**.

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

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

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

**Principal Body Corporate** means the body corporate created under Section 30 of the BCCM Act upon establishment of the Principal Scheme

**Principal Body Corporate Agreements** means any proposed service contractor's agreements and possibly other agreements to be entered into by the Principal Body Corporate when the Principal Scheme is established (or to be continued when the Principal Scheme is changed), draft copies of which are contained in the Disclosure Documents. If the Principal Scheme is already established, these agreements may have already been entered into by the Principal Body Corporate.

**Principal CMS** means the community management statement recorded for the Principal Scheme when the Scheme is established or changed (as the case may be) as applies to the Lot sold under this Contract.

**Principal Scheme** means the **Ashford Residences community titles scheme**.

**Principal Scheme Land** means the land as described in the Disclosure Documents to be subdivided to create or progressively develop the Principal Scheme and the Scheme and other lot(s) included in the Principal Scheme.

**Promotional Materials** means all marketing materials (including websites), models, artists impressions, display boards and similar and any representation or depiction contained in any display apartment in relation to the Property, the Principal Scheme or the Scheme.

**Proposed CMS** means the proposed community management statement for the Scheme included in the Disclosure Documents which relates to the stage of the Scheme in which the Lot is proposed to be included.

**Proposed Principal CMS** means the proposed community management statement for the Principal Scheme to apply on establishment or changing of the Scheme, a draft copy of which is included in the Disclosure Documents.

**Proposed Lot Entitlement** means the proposed contribution or interest entitlement (as the context requires) of a proposed lot in the;

- (a) Principal Scheme as shown in the Proposed Principal CMS; or
- (b) Scheme as shown in the Proposed CMS.

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

**Scheme** means the **Ashford Land** community titles scheme. The Scheme may be developed in stages and is or is proposed to be a;

- (a) subsidiary scheme of the Principal Scheme; and
- (b) lot included in the Principal Scheme.

**Scheme Land** means the land as described in the Disclosure Documents to be subdivided to create or progressively develop the Scheme. The Scheme Land will be created from the Principal Scheme Land.

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

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

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

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

**Settlement Date** means the date on which Settlement is to take place determined in accordance with the clause 44 **Settlement Date**.

**Settlement Materials** means all things which the Seller is required to provide or deliver to the Buyer (including, if applicable, by way of Electronic Settlement) at or following Settlement including any releases, withdrawals, documents, certificates, declarations, Notices, instruments, materials, letters or similar.

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

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

**Sold Property** means the Lot.

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

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

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

**Sunset Date** means that date which is **3 ½ years** after the day this Contract was entered into by the Buyer or any later date for Settlement requested by the Buyer and agreed to by the Seller.

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

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

**Transfer Documents** means:

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

(If before Settlement the Queensland Land Registry changes its requirements of or the form of the Transfer

Documents, then the definition of Transfer Documents will be deemed to be amended to give effect to the intent of this Contract to provide for the then equivalent forms and documents as determined by the Seller's Solicitors, acting reasonably).

**Variations** means variations, changes, reductions, omissions, substitutions or additions to (as the context requires) the Principal Scheme, the Scheme, the Common Property, the Body Corporate assets or the Lot, including variations, changes, reductions, omissions, substitutions or additions to any one or more of the above which are in respect of the:

- (a) titling arrangements;
- (b) administration and management arrangements;
- (c) utility infrastructure and supply arrangements;
- (d) method of construction;
- (e) construction materials;
- (f) number of lots:
  - (i) or subsidiary schemes included in the Principal Scheme;
  - (ii) included in the Scheme; or
  - (iii) included in other subsidiary schemes of the Principal Scheme;
- (g) change in, omission or reduction of the number of:
  - (i) community titles schemes which are subsidiary community titles schemes of the Principal Scheme,
  - (ii) buildings within the Principal Scheme;
  - (iii) buildings within other subsidiary schemes of the Principal Scheme; or
  - (iv) stages within the Principal Scheme or the Scheme (including the Seller not proceeding with the development of any or all of the balance stages of the Principal Scheme or the Scheme);
- (h) the staged nature of the carrying out of the development of the Principal Scheme or the Scheme including the Seller's intention to commence or complete any particular stage and the timing, sequencing and completion of any stage;
- (i) facilities;
- (j) access arrangements;
- (k) landscaping;
- (l) composition;
- (m) density;
- (n) mix of or rights in relation to uses;
- (o) design;
- (p) retaining walls;
- (q) fences;
- (r) elevations;



- (s) location;
- (t) layout;
- (u) size;
- (v) dimensions;
- (w) area;
- (x) components which comprise the Principal Scheme or the Scheme;
- (y) community facilities within the Principal Scheme or the Scheme;
- (z) descriptions or identification numbers of lots, plans or assets; and
- (aa) the design, location, size and dimensions of any pool (if any) and associated facilities;
- (bb) addresses – street names and numbers.

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

## **B AGREEMENT TO SELL & BUY**

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

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

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

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

## **C SELLER'S CONDITIONS**

### **7. Conditions Subsequent**

Settlement of this Contract is subject to the Seller satisfying the following Conditions Subsequent:

- (a) if the Seller is not already the owner of the Scheme Land, the Seller becoming the owner of the Scheme Land;
- (b) the Seller obtaining all necessary Authority approvals for the development of the stage of the Scheme which includes the Property;
- (c) recording of the Community Management Statement which first includes the Lot with the Queensland Land Registry;
- (d) registration of the Plan.

### **8. Unreasonable Conditions**

8.1 Clause 8.2 applies if an Authority:

- (a) refuses to grant or revokes a necessary permit or approval required to satisfy the Condition Subsequent in clause 7;
- (b) grants or intimates that it proposes to grant an approval or permit for the development of the Scheme (or any stage of it) containing conditions with which the Seller is unable or, acting reasonably, not willing to comply;

- (c) refuses to seal the Community Management Statement or the Plan; or
- (d) agrees to seal the Community Management Statement or the Plan on conditions with which the Seller is unable or, acting reasonably, not willing to comply.

8.2 If this clause 8.2 applies, the Seller may terminate this Contract by Notice to the Buyer. If this happens:

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

8.3 For the purpose of this clause 8, the Buyer acknowledges and agrees that:

- (a) at the time of entering into this Contract, the Seller may not know all of the conditions, imposed by Authorities to which the:
  - (i) necessary approvals and permits for the development of the Scheme (or any stage of it) may be subject; and
  - (ii) sealing of the Community Management Statement and the Plan may be subject;
- (b) there may be a variety of reasons why the Seller may be unable or unwilling to comply with particular conditions to which an approval or permit for the development of the Scheme (or any stage of it) or to which the sealing of the Community Management Statement or the Plan may be subject, including that such conditions make the carrying out of the development of the Principal Scheme or the Scheme commercially or financially undesirable or unviable or unacceptably risky for the Seller; and
- (c) as long as the Seller is acting in good faith, it will not be unreasonable for the Seller to refuse to accept conditions to which an approval or permit for the development of the Scheme (or any stage of it) or to which the sealing of the Community Management Statement or Plan is subject, if the Seller makes a judgement that such conditions make the carrying out of the development of the Principal Scheme or the Scheme commercially or financially undesirable or unviable or unacceptably risky for the Seller.

**Explanatory Note:** *The lawful completion of the Scheme is conditional upon the matters identified in clause 7. If those conditions are not forthcoming then the Scheme will be unable to proceed. If any conditions imposed by an Authority are unreasonable, such conditions could impact on the financial viability of the Scheme. In those circumstances, the Seller has retained the right to terminate the Contract. This right is balanced by the obligation on the Seller to act reasonably and to return the Deposit and any Interest to the Buyer. In those circumstances, the Buyer will suffer no significant financial detriment*

9. **Sunset Date**
- 9.1 Subject to clause 9.2, Settlement must be effected by the Sunset Date, failing which either Party may terminate this Contract by Notice to the other Party. If this happens:
- (a) the Deposit and Interest must be released to the Buyer; and
  - (b) the Buyer has no further Claim against the Seller.
- 9.2 Notwithstanding clause 9.1, if Settlement has not been effected because of the Buyer's default, the Buyer has no right to terminate this Contract.
10. **Seller's Condition – Latest Date**
- 10.1 Clause 10.3 applies;
- (a) at any time up to and including the Latest Date; and
  - (b) if the Seller, acting in good faith, reasonably believes that;
    - (i) the carrying out of the development of the Principal Scheme or the Scheme will not proceed; or
    - (ii) that the continued existence of this Contract or other contracts may jeopardise the Seller's ability to undertake or continue the carrying out of the development of the Principal Scheme or the Scheme.
- 10.2 By way of example only and without limitation, the following circumstances may jeopardise the Seller's ability to undertake or continue the development of the Principal Scheme or the Scheme:
- (a) the proposed financier to enable construction of relevant improvements will not consider this Contract to be a qualifying pre-sale contract for funding purposes;
  - (b) the Seller is of the view that it will not obtain funding to enable the construction of relevant improvements on terms and conditions satisfactory to the Seller;
  - (c) insufficient sales of proposed lots have been effected during the period up to the Latest Date;
  - (d) projections for sales of proposed lots for the period after the Latest Date are insufficient; or
  - (e) the Seller is of the view it may not be able to satisfy the Conditions Subsequent by the Sunset Date.
- 10.3 If this clause 10.3 applies, the Seller may by Notice to the Buyer terminate this Contract.
- 10.4 On termination of this Contract under clause 10.3:
- (a) the Deposit and Interest must be released to the Buyer; and
  - (b) the Buyer has no further Claim against the Seller.

- 10.5 The Seller may waive the benefit of clause 10.3 at any time. The Seller is taken to have waived the benefit of clause 10.3 if the Seller has not terminated this Contract by the Latest Date.
- 10.6 If this Contract is entered into after the Latest Date, then this clause 10 does not apply.

**Explanatory Note:** *The ability of the Seller to complete the Scheme may be dependent upon a number of circumstances including, but not limited to, the obtaining of suitable finance and the obtaining of sufficient pre-sales. During the course of the carrying out of the development of the Scheme, economic and other factors may change making it difficult and/or uneconomic to proceed with the development of the Scheme. In those circumstances, the Seller needs the right to terminate the Contract. This right is limited however such that the Seller is unable to terminate the Contract merely because it has a better deal. If the Contract is terminated the Seller is obliged to return the Deposit and any Interest to the Buyer. In those circumstances, the Buyer will suffer no significant financial detriment. The ability of the Seller to obtain finance to carry out the development of the Scheme may be linked to securing sufficient pre-sales.*

**D CONSTRUCTION STANDARDS & ACTIVITIES**

**11. Construction Standards**

The Seller will, subject to the terms of the Contract, including those regarding the rights of the Seller to make Variations, cause the Lot, to be created substantially in accordance with the Identification Plan, in a good and workmanlike manner.

**12. Construction Activities**

12.1 The Buyer acknowledges that construction of the Principal Scheme and the Scheme will not be totally complete at Settlement and may be completed after Settlement.

12.2 The Buyer will not Object to:

- (a) any building of improvements or any other things done on the Principal Scheme Land or the Scheme Land or within the Principal Scheme or the Scheme including any noise, nuisance or other inconvenience which might arise from those activities;
- (b) the use by the Seller and any party authorised by the Seller of parts of the Principal Scheme or the Scheme for construction access and storage of building materials, vehicles, equipment or fill;
- (c) the Seller and any party authorised by the Seller causing areas to be temporarily closed off to facilitate the construction of any part of the Principal Scheme or the Scheme; or
- (d) the Seller not making available for use by occupants certain areas of Common Property (including hoarding or closing off areas to prevent access and use) due to safety reasons or to enable the further carrying out of the development of the Principal Scheme or the Scheme or construction activities generally,

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

*Scheme and the timing for the completion of the Principal Scheme and the Scheme.*

12.3 The Buyer must comply with any reasonable directions of the Seller and any contractor appointed or authorised by the Seller while building of improvements is being carried out on the Principal Scheme Land, the Scheme Land or within the Principal Scheme or the Scheme, including directions related to traffic flow, both vehicle and pedestrian.

## 15. Buyer's agreement and acknowledgements about Variations

15.1 The Buyer acknowledges and agrees that:

- (a) as the Property is sold "off the plan", there are likely to be differences between the Principal Scheme, the Scheme and the Property as shown or described in any Promotional Materials, the Contract and the Disclosure Documents and as titled or built;
- (b) the Seller has made no representation and given no warranty that the Principal Scheme, the Scheme or the Property as titled or built will be exactly the same as shown or described in any Promotional Materials, the Contract or the Disclosure Documents, or, if any such representation has been made or warranty given, it is hereby withdrawn by the Seller;
- (c) the Seller may not own or have control over all of the Principal Scheme Land, the Scheme Land, the Principal Scheme or the Scheme;
- (d) the intention of the Seller to carry out the entire development of the Principal Scheme or the Scheme may not be fixed and unequivocal;
- (e) the Seller may carry out only some parts of the Principal Scheme or the Scheme and not others;
- (f) the Seller may not have applied for, obtained or finalised all necessary approvals for the Principal Scheme, the Scheme or the Property;
- (g) the Seller may not have finalised the design of all aspects of the Principal Scheme, the Scheme or the Property;
- (h) further detailed design may need to be undertaken by the Seller prior to completion of any civil works or construction;
- (i) any statements made in any Promotional Materials, Contract or the Disclosure Documents regarding the Seller's intentions about the carrying out of the development of the Principal Scheme, the Scheme or the Property are:
  - (i) statements of the Seller's then present intention only and not predictions or representations that development of the Principal Scheme, the Scheme or the Property will be carried out in accordance with that information;
  - (ii) correct as at the Contract Date but may cease to be so in the future as circumstances change;
- (j) the development of the Principal Scheme, the Scheme or the Property may be subject to Variations for various reasons including requirements of Authorities, financial feasibility, civil works costs, construction costs, market conditions, rates of sale of lots,

## 13. Buyer's Consent – Further Development

13.1 The Buyer consents to any application for any approval made to any Authority for the further carrying out of the development of the Principal Scheme or the Scheme or improvements within them and agrees, if directed by the Seller:

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

13.2 The Buyer will not Object to any application for any approval made with any Authority for further development or the carrying out of improvements, provided such application is for an approval which, if granted and given effect to, will not have a direct material adverse effect on the use or the value of the Property.

## 14. Common Property Finishes

14.1 All Common Property finishes and landscaping will be determined by the Seller in its discretion.

14.2 The Buyer must not Object if Common Property facilities, for example, recreational areas, barbeque facilities, swimming pool and the like, are not constructed and made available until subsequent stages of the development of the Principal Scheme are carried out.

## E VARIATIONS

**Explanatory Note:** *At its inception, the Principal Scheme and Scheme begins as a general concept and becomes more defined as it moves towards Settlement. The final outcome may be impacted by a number of factors during the development process which cannot be accurately anticipated or predicted including, but not limited to, conditions of building approval, finance conditions, availability of materials and the finessing of design elements, which necessarily requires a level of flexibility to make additions, alterations and deletions to the initial concepts for the Principal Scheme or the Scheme. In those circumstances, in order to give effect to the general concept for the Principal Scheme and the Scheme, the Seller has retained the right to make certain Variations. The Buyer has been restricted as to the objections it can make to those Variations as such objections have the ability to affect other buyers, the financial viability of the Principal Scheme and the*

etc (which may occur after this Contract is entered into or after Settlement);

(k) components (including any or all future stages) of the development of the Principal Scheme or the Scheme (including community facilities) may not be developed at all or may be developed subject to significant Variations for various reasons including those specified in this clause (which, for avoidance of doubt, may change the character of the Principal Scheme or the Scheme);

(l) it is reasonable that the Seller has flexibility to and may make Variations to the development of the Principal Scheme, the Scheme and the Property as set out in this Contract;

(m) the Buyer:

(i) has not relied on or been induced to enter into this Contract or purchase the Property by any information about the carrying out of the development of the Principal Scheme, the Scheme or the Property; and

(ii) accepts the risk that any part of the development of the Principal Scheme or the Scheme may not be carried out or may be carried out subject to Variations in accordance with this Contract.

15.2 The Buyer acknowledges and understands that the Seller:

(a) has relied on and been induced by the matters acknowledged and agreed to by the Buyer under clause 15.1 in deciding to enter into this Contract; and

(b) would not have agreed to sell the Property to the Buyer but for the acknowledgements and agreements of the Buyer under clause 15.1.

## 16. Variations to the Principal Scheme

16.1 The Seller is entitled to make Variations to the Principal Scheme (including community facilities) so that they are different from those depicted in any Promotional Materials, the Contract and the Disclosure Documents as determined by the Seller in its discretion.

16.2 The Buyer will not Object because of any Variations as set out in clause 16.1.

## 17. Seller's right to make Variations to the Scheme, the Common Property, & the Lot

17.1 The Seller is entitled at its discretion to make Variations to the:

- (a) Scheme;
- (b) Common Property; and
- (c) Lot;

so that they are different from those depicted in any Promotional Materials, the Contract and the Disclosure Documents.

17.2 The Buyer must not Object because of any such Variations providing:

(a) in the case of Variations to the Scheme or the Common Property they do not:

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

(b) in the case of Variations to the Lot, they are Permitted Variations;

(c) in the case of any Variation, if the Seller has given the Buyer a Further Statement concerning the Variation and a period of 21 days has elapsed after the Seller has given the Buyer the Further Statement.

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

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

## 18. Rights of Buyer if Buyer entitled to Object to Variation

18.1 This clause 18.2 applies if the Buyer is entitled to Object to a Variation pursuant to the Contract and is subject to any statutory rights of the Buyer.

18.2 If this clause 18.2 applies:

(a) the Buyer must not Object other than as set out in this clause; and

(b) the Buyer may give Notice to the Seller claiming compensation as a result of the Variation (**Compensation Notice**), such Compensation Notice to be given before the earlier of:

- (i) the date 1 Business Day prior to the date which is (first) fixed as the Settlement Date; and
- (ii) the date 30 days after the Seller gives Notice to the Buyer that the Variation has been made or is intended to be made,

failing which the Seller is not obligated to consider it or pay compensation and the Buyer will have no further Claim or right to Object.

18.3 The amount of any claim for compensation made by the Buyer under this clause must be limited to an amount no greater than the reduction in value (if any) of the Property occurring as a result of the Variation.

- 18.4 If the Buyer gives a Compensation Notice, the Seller must, within 10 Business Days after receipt of the Compensation Notice, give Notice to the Buyer that the Seller either:
- (a) accepts the Buyer's claim for compensation set out in the Compensation Notice;
  - (b) terminates this Contract, in which case this Contract is at an end, the Deposit and Interest must be refunded to the Buyer and the Buyer will have no further Claim against the Seller arising out of the subject matter of this Contract; or
  - (c) requires a valuer to determine the amount of compensation payable to the Buyer (**Valuer Notice**).
- 18.5 If the Seller gives a Valuer Notice:
- (a) the Parties must use their best endeavours to agree a valuer to determine the compensation within 5 Business Days and, failing agreement, the valuer will be nominated by the President for the time being of the Queensland Law Society Incorporated (or their nominee) following request by either Party;
  - (b) the valuer will be instructed to determine the amount of the compensation:
    - (i) based on the reduction in value (if any) of the Property occurring as a result of the Variation; and
    - (ii) within a reasonable time and, in any event, within 10 Business Days;
  - (c) the determination of the valuer as to the quantum of compensation is final and binding on the Parties and is the only compensation payable by the Seller; and
  - (d) the costs of the valuer must be paid equally by the Parties.
- 18.6 If the Buyer gives a Compensation Notice, the Settlement Date is the later of:
- (a) the Settlement Date calculated in accordance with the clause 44 **Settlement Date**; and
  - (b) the date 5 Business Days after the measure of compensation is accepted by the Seller or determined by a valuer (as the case may be).
- 18.7 Any compensation payable by the Seller to the Buyer under this clause 18 is payable at, and is conditional upon, Settlement.

## F DEALINGS WITH COMMON PROPERTY

### 19. Seller's Right to Grant Leases & Licences

- 19.1 The Seller may procure that the Principal Body Corporate grant leases and licences over areas of Common Property and Principal Body Corporate assets on such terms and conditions that the Seller considers appropriate, providing that the grant does not:
- (a) materially detract from the standard or character of the Principal Scheme;
  - (b) materially affect the use of Common Property amenities or Principal Body Corporate assets; or
  - (c) have a direct material adverse effect on the use or value of the Property.
- 19.2 The Seller discloses and the Buyer acknowledges and agrees that the Seller may derive a benefit, income or fee due to a grant of the kind referred to in clause 19.1. The Buyer must not Object if this happens.
- 19.3 Subject to clause 19.1, the Buyer will not Object to the Seller exercising its rights to procure that the Principal Body Corporate grant leases and licences over areas of Common Property or Principal Body Corporate assets.
- 19.4 Without limitation, and by way of example only, the Seller may procure that the Principal Body Corporate grant a lease or licence:
- (a) to the Seller or any party nominated by the Seller over an area of rooftop Common Property for the purposes of installing and keeping a telecommunications aerial device at a peppercorn or nominal rental amount;
  - (b) to the Seller or any party nominated by the Seller over an area of Common Property for the purposes of installing and keeping signage at a peppercorn or nominal rental amount; or
  - (c) to a utility provider over an area of Common Property being an equipment keeping room in which utility supply equipment owned by the utility provider is kept.
- 19.5 The Seller or the nominated party who has the benefit of a lease or licence area as contemplated by this clause may sub-lease or sub-licence (as applicable) that area to a telecommunications carrier and derive income or other benefits from doing so. If this happens, the Buyer must not Object.

## G TITLE

### 20. Title

- 20.1 Title is under the BCCM Act and the *Land Title Act 1994 (Qld)*. The Buyer accepts Title subject to the provisions of these Acts.
- 20.2 The Buyer is not entitled to make any requisitions as to the Title.
- 20.3 The Buyer accepts Title and the Property subject to and must not Object as a result of any of the following matters, even if they adversely affect the Common Property (all of which are authorised or permitted encumbrances or dealings for the purposes of this Contract):
- (a) the Building Covenants;
  - (b) the Community Management Statement;
  - (c) the Principal CMS;
  - (d) any matter endorsed upon the Plan;
  - (e) any rights or interests reserved in favour of the Crown;
  - (f) any administrative advices or similar dealings;

- (g) any encumbrances in favour of any Authority or any service authority (whether registered, unregistered or statutory);
- (h) the conditions of any approval of any Authority;
- (i) the existence or passage through the Property of utilities or utility infrastructure or other systems or services and all statutory rights relating to services;
- (j) any notifications, easements, restrictions, encumbrances, covenants or other matters or dealings disclosed to the Buyer in the Disclosure Documents, this Contract or elsewhere;
- (k) all notifications, easements, restrictions, encumbrances, covenants, administrative advices and dealings (other than a mortgage, caveat, writ or charge) on the title for the Common Property or the Title or otherwise affecting the Property or the Common Property not disclosed to the Buyer in the Disclosure Documents or this Contract providing they do not materially adversely affect the Buyer's use or value of the Property;
- (l) any easements benefiting or burdening the Property, the Title, the Principal Scheme Land, the Scheme Land or the Common Property, whether statutory or otherwise for:
  - (i) support;
  - (ii) utility services and utility infrastructure;
  - (iii) shelter;
  - (iv) projections;
  - (v) access; and
  - (vi) maintenance of buildings close to boundary; and
- (m) all notifications, easements, statutory covenants, administrative advices and restrictions in relation to the Title, the Principal Scheme Land, the Scheme Land, the Common Property or the Property required in order to satisfy the requirements of any Authority.

20.4 The Buyer must not Object to the surrender, extinguishment, variation or non-application to the Property, Title or the Common Property of any encumbrances, easements, interests, dealings or advices which apply to the Principal Scheme Land or the Scheme Land.

## 21. Encumbrances on Title

At Settlement the Title will be free from all material adverse encumbrances except those:

- (a) authorised by the BCCM Act or other statute;
- (b) authorised or permitted by this Contract;
- (c) in respect of which the Buyer must not Object under this Contract; or
- (d) otherwise disclosed in the Disclosure Documents, this Contract or elsewhere.

## 22. Mistake

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

- (a) is not entitled to terminate this Contract;
- (b) may (unless that right is limited elsewhere in this Contract) make a claim for compensation if any loss is suffered by the Buyer; and
- (c) subject to clause 22(b), is not entitled to otherwise Object.

## 23. Buyer must not Object

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

- (a) 24 hour public access being permitted over certain components of the Principal Scheme or the Scheme such as roadways, driveways, parking areas and thoroughfare areas.
- (b) the Seller carrying out the development of proposed stages of the Principal Scheme or the Scheme at any time, including as combined stages;
- (c) the Seller deciding not to proceed with all or some proposed future stages of the Principal Scheme or the Scheme at all;
- (d) any of the matters and disclosures contained in this Contract, the Disclosure Documents or the Promotional Materials;
- (e) any error, mistake or omission contained in the Disclosure Documents or the Promotional Materials;
- (f) the Seller replacing or updating materials disclosed in the Disclosure Documents or the Promotional Materials;
- (g) the views or visual aspect from the Lot being interrupted due to the further carrying out of the development of the Principal Scheme including if the Seller has made Variations to any of them resulting in the views or visual aspect being interrupted;
- (h) the Lot being affected by shadowing or privacy issues from other improvements within the Scheme;
- (i) residential lots within the Principal Scheme or the Scheme being sold as affordable or low cost type housing whether pursuant to a condition of a development approval or otherwise;
- (j) the implementation or non-implementation of any environment sustainability initiatives in respect of the Principal Scheme or the Scheme;
- (k) settlement of lots within the Principal Scheme or the Scheme taking place at different times;
- (l) the Seller changing its name or there being an error or inaccuracy in the name, company

- number, address or other particulars of the Seller in this Contract or the Disclosure Documents;
- (m) any transfer, lease, easement, licence, covenant or other right over part of the Common Property, Principal Body Corporate assets or Body Corporate assets given to the Seller, any Authority, any provider of utility infrastructure, any service contractor, the owner of a lot in the Principal Scheme or the Scheme or the owner of nearby land;
- (n) the Principal Body Corporate or the Body Corporate entering into agreements with body corporates of other community titles schemes under which members and occupiers of lots in the Principal Scheme or the Scheme and lots included in the other schemes share the use and enjoyment of facilities forming part of the common property or body corporate assets of one or more of the schemes;
- (o) any alteration to the street number or address of the Principal Scheme, the Scheme or the Lot or the name of or any intellectual property associated with them;
- (p) any alteration in the number or location of lots in the Principal Scheme or the Scheme or the numbering, size, location or permitted use of lots in them;
- (q) any alteration to the Lot Entitlement of the;
- (i) Scheme in the Principal Scheme;
- (ii) Lot in the Scheme; or
- (iii) any other lot in the Principal Scheme or the Scheme,  
from the Proposed Lot Entitlement;
- (r) any alteration in the aggregate Lot Entitlement of all:
- (i) lots included in the Principal Scheme; or
- (ii) lots included in the Scheme;
- (s) any alteration to the materials which comprise the Statutory Disclosure Statements including any community management statement as a result of any changes to legislation;
- (t) the Principal Scheme Land or the Scheme Land being affected by flooding or other flow or inundation of water at any time including before or after formation of this Contract or Settlement;
- (u) a boundary of the Principal Scheme Land or the Scheme Land not being fenced, or any boundary, fence or wall not being upon or within the boundary;
- (v) the existence of an encroachment onto or from the Principal Scheme Land or the Scheme Land;
- (w) the existence or passage through the Principal Scheme Land, the Scheme Land, the Common Property or the Lot of utilities or utility infrastructure or other systems or services whether for the Property, the Common Property or other adjoining property or lots;
- (x) the subdivision of the:
- (i) Principal Scheme Land into the Principal Scheme; or
- (ii) Scheme Land into the Scheme,  
by any type and number of survey plans and accompanying community management statements as determined by the Seller;
- (y) the subdivision or amalgamation of any lots in the Principal Scheme or Scheme, other than the Lot;
- (z) the transfer of any additional land into the Principal Scheme or the Scheme whether as a lot or Common Property;
- (aa) the transfer, dedication or excision of any land out of the Principal Scheme Land, the Scheme Land, the Scheme;
- (bb) an alteration to the Common Property, Principal Body Corporate assets, Body Corporate assets or any other facilities or rights in relation to their use;
- (cc) facilities within the Principal Scheme or the Scheme being made available for use at different times including after Settlement;
- (dd) an alteration in the access arrangements and facilities intended to benefit or burden the Principal Scheme or the Scheme;
- (ee) the creation of community title schemes in addition to the Principal Scheme and the Scheme;
- (ff) certificates of classification (or equivalent) being issued at different times for different parts of the the Principal Scheme;
- (gg) there being no pool safety certificate at Settlement if there is a pool;
- (hh) a change in the Regulation Module to apply to the Principal Scheme or the Scheme;
- (ii) the disclosure or non-disclosure of proposed service location diagrams as part of the Proposed Principal CMS or the Proposed CMS;
- (jj) arrangements in relation to supply of utilities including if the Principal Body Corporate or the Body Corporate enters into arrangements for the supply of utilities;
- (kk) utility infrastructure being owned by the supplier of the utility and not the Principal Body Corporate or the Body Corporate (for example, cabling, meters, hot water, air conditioning and gas supply equipment, communications equipment and associated infrastructure);
- (ll) the Seller causing the Principal Body Corporate or the Body Corporate to have one or more general meetings while it is (or effectively is) the sole member of them and electing or confirming

- the appointment of the members of the Committee and attending to matters required by the BCCM Act;
- (mm) the Seller causing the Principal Body Corporate or the Body Corporate to give any indemnity in favour of an Authority, service provider or other entity, including if the indemnity is in respect of loss of profits;
- (nn) the Seller causing the Principal Body Corporate or the Body Corporate to enter into any agreement that may be a requirement of any approval issued by an Authority or as a condition to the provision of any service or utility;
- (oo) the Seller causing changes to be made to the Proposed Principal CMS or the Proposed CMS as required to comply with or set out conditions of any approval issued by an Authority, including deleting or amending any proposed conditions contained in them;
- (pp) the Seller causing the Principal Body Corporate or the Body Corporate to pass resolutions while the Seller is the sole member of them, including resolutions that may be beneficial to the Seller or parties related to it or resolutions to assist or facilitate the further carrying out of the development of the Principal Scheme or the Scheme;
- (qq) the Seller causing the Principal Body Corporate or the Body Corporate to enter into, not enter into or amend agreements, documents or dealings or any other matter referred to in the BCCM Act or disclosed or contemplated in this Contract or the Disclosure Documents (including all or some of the Principal Body Corporate Agreements or the Body Corporate Agreements);
- (rr) the identity of any service contractor or letting agent under a Principal Body Corporate Agreement or a Body Corporate Agreement not being known or not being disclosed to the Buyer as at the Contract Date;
- (ss) the manager under any caretaking service contract or letting authorisation not residing within the Principal Scheme or the Scheme;
- (tt) any delay in the entry by the Principal Body Corporate or the Body Corporate into any of the Principal Body Corporate Agreements or the Body Corporate Agreements respectively or delay in their commencing including if the Seller causes interim arrangements to be effected until those agreements commence such as for caretaking and letting authorisations;
- (uu) the grant of the use of areas of the Common Property to the parties who enter into Principal Body Corporate Agreement or Body Corporate Agreements (or some of them) for the use of an office, reception, storage space or other uses ancillary to the duties of the service contractor or business of the letting agent;
- (vv) the Lot or the Common Property being recorded on or in the Contaminated Land Register, Environmental Management Register or any similar register maintained by an Authority or being subject to a site management plan, remediation action plan or similar plan because the Principal Scheme Land or the Scheme Land (or any part of them) is or was recorded on such a register or is or was subject to such a plan;
- (ww) the Principal Scheme Land, the Scheme Land, the Common Property or the Lot being recorded on or in the Contaminated Land Register or the Environmental Management Register or any similar register or being subject to a site management plan, remediation action plan or similar because of something that occurs or contamination that is discovered during construction of the Principal Scheme or the Scheme (or any part of them) or because of the installation of improvements within the Principal Scheme or the Scheme (or any part of it), for example, fuel storage tanks for back-up generators; and
- (xx) the existence of any electrical substation, sewerage system, transformer or telecommunications facility (including a tower or satellite dish) or similar thing within the the Principal Scheme or the Scheme.

## **H PRINCIPAL BODY CORPORATE & BODY CORPORATE**

### **24. By-Laws**

24.1 Subject to clause 24.2, at Settlement, the By-laws for the:

- (a) Scheme will be as set out in the Proposed CMS; and
- (b) Principal Scheme will be as set out in the Proposed Principal CMS

24.2 Subject to the BCCM Act, the Seller is entitled to make or cause to be made changes to the By-laws considered necessary by the Seller, or as required by an Authority for the effective control and management and progressive development of the Principal Scheme or the Scheme. The Buyer must not Object to any changes of the By-laws.

### **25. Body Corporate Records**

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

### **26. Principal Body Corporate & Body Corporate Agreements**

26.1 The Seller may cause the:

- (a) Principal Body Corporate to enter into the Principal Body Corporate Agreements; and
- (b) Body Corporate to enter into the Body Corporate Agreements,



or any one or more of them with any party or parties which, in the Seller's opinion, are reasonably qualified to perform the obligations contained in those agreements including the Seller itself or parties however related to the Seller.

26.2 The Seller may change the terms of the Principal Body Corporate Agreements or the Body Corporate Agreements as considered necessary by the Seller for the effective control and management of the Principal Scheme or the Scheme. The Buyer must not Object to any such changes.

26.3 The Seller discloses and the Buyer acknowledges that the Seller may receive fees (or other benefits) for causing the Principal Body Corporate Agreements or the Body Corporate Agreements or any one or more of them to be entered into.

26.4 The Buyer warrants and represents to the Seller that it has read, understood and taken advice about the Principal Body Corporate Agreements and the Body Corporate Agreements (or has had an opportunity to do so) and agrees that the terms of those instruments:

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

and that the powers to be exercised and functions required to be performed by any caretaking service contractor and letting agent under those agreements are appropriate for the Principal Scheme and the Scheme and do not adversely affect the Principal Body Corporate or the Body Corporate or their ability to carry out their functions.

26.5 The Buyer consents to the Seller causing the:

- (a) Principal Body Corporate to enter into the Principal Body Corporate Agreements; and
- (b) Body Corporate to enter into the Body Corporate Agreements,  
and if this has already occurred as at the date of this Contract, the Buyer affirms any such action taken by the Seller and agrees that the consideration is the property of the Seller absolutely.

26.6 Clauses 26.7, 26.8 and 26.9 are subject to the Seller having complied with its obligations under the terms of the BCCM Act in relation to the Principal Body Corporate Agreements and the Body Corporate Agreements.

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

- (a) causing the Principal Body Corporate Agreements or the Body Corporate Agreements or any one or more of them to be entered into with a party nominated by the Seller;
- (b) causing the Principal Body Corporate Agreements or the Body Corporate Agreements or any one or more of them to be entered into

with a party related to the Seller, including by common shareholders or company officers to the Seller; or

(c) obtaining a fee or deriving any form of benefit, directly or indirectly, as a result of the:

- (i) Principal Body Corporate entering into the Principal Body Corporate Agreements or any one or more of them; or
- (ii) Body Corporate entering into the Body Corporate Agreements or any one or more of them.

26.8 The Buyer must vote against any motion of the Body Corporate that the Body Corporate objects to or makes a Claim in relation to the matters set out in this clause.

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

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

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

26.12 The Buyer acknowledges that the manager under any caretaking service contract or letting authorisation may (but is not required to be) be a recognised or branded operator with a chain of management rights type operations, and, if that happens, the Buyer must not Object.

26.13 The Seller may cause the Principal Body Corporate or the Body Corporate to increase any *relevant limit for major spending* by the relevant resolution of the Principal Body Corporate or the Body Corporate at general meeting to facilitate any of the Principal Body Corporate Agreements or the Body Corporate Agreements or other service contractor or body corporate manager engagements being entered into by the Body Corporate Agreements or the Body Corporate. If this happens, the Buyer must not Object.

## 27. Waste Services

27.1 The Seller discloses to the Buyer that the Principal Body Corporate or the Body Corporate and each owner of a lot within the Scheme may be required to give an indemnity to Brisbane City Council or other Authorities and others against any damage to pavement or other driving surfaces resulting from the weight of the waste collection vehicles or similar indemnity.

27.2 The Buyer must give such an indemnity if directed to do so by the Seller in the form required by the Brisbane City Council or other Authority and must not Object due to the giving of the indemnity or the liability of the Principal

Body Corporate or the Body Corporate (and the Buyer) under the indemnity.

29.3 If the Buyer has not made the application for FIRB Approval by the Application Date, and without limitation to the Seller's rights arising out of that failure, the Seller may, but is not required to, give Notice to the Buyer that the Seller will make the application for FIRB Approval. If this happens, the following will apply:

## I THE BUYER

### 28. Proof of identity

28.1 If directed to do so by the Seller, the Buyer must, within 5 Business Days after direction, give to the Seller a copy of the Buyer's passport (if any), and if the Buyer is a Company, a copy of the passport of each of the directors and shareholders of the Buyer or such other evidence of the identity of the Buyer as the Seller may reasonably require. If the Buyer fails to do this, the Buyer will be in default of an Essential Term.

### 29. Foreign Interest

29.1 The Buyer promises the Seller that its status as a Foreign Interest as shown in the Reference Schedule is correct. The Buyer acknowledges that the Seller has relied on and been induced by the Buyer's promise in electing to enter into this Contract. If the Buyer's promise is not correct, the Buyer will be taken to have breached an Essential Term and the Seller may take whatever actions are available to the Seller under this Contract or at law.

29.2 If the Buyer is shown in the Reference Schedule as a Foreign Interest then:

- (a) this Contract is subject to the Treasurer of the government of the Commonwealth of Australia (**Treasurer**) or his delegate consenting to or providing a notice that the Treasurer has no objections (or similar) to the Buyer's purchase of the Property under FATA (**FIRB Approval**) within 90 days after the Contract Date (**Approval Date**);
- (b) the Buyer must make an application for the FIRB Approval and pay all relevant fees and taxes associated with the application and FIRB Approval within 5 Business Days after the Contract Date (**Application Date**) and must diligently pursue that application. This clause 29.2(b) is an Essential Term;
- (c) the Buyer must give the Seller a copy of the application and sufficient substantiation that all necessary payments of fees and taxes have been made within 2 Business Days after making the application and payments. This clause 29.2(c) is an Essential Term; and
- (d) the Buyer must give Notice to the Seller of the outcome of the application for FIRB Approval within 2 Business Days of determination by the Treasurer and in any event by the Approval Date, indicating that the:
  - (i) FIRB Approval has been obtained (and on giving of that Notice the condition in this clause is satisfied); or
  - (ii) FIRB Approval has not been obtained and that this Contract is terminated (in which case the Deposit and any Interest is to be released to the Buyer and neither Party has any Claim against the other).

(a) the Buyer appoints the Seller as its agent to make and administer the application for FIRB Approval;

(b) within 5 Business Days after request by the Seller, the Buyer must give all information (including a copy of the Buyer's passport), sign all documents and do all things required by the Seller in order to facilitate any application for FIRB Approval. If the Buyer fails to do this, the Buyer will be in default of an Essential Term;

(c) the Seller will be taken to have obtained the FIRB Approval if the Seller obtains an exemption certificate or similar from the Treasurer under which the acquisition of the Property by the Buyer is approved or consented to for the purposes of FATA;

(d) the Buyer must, as an Essential Term, within 5 Business Days of direction by the Seller, pay to the relevant authority (Australian Taxation Office) all relevant fees and taxes associated with the application and FIRB Approval and provide the Seller with a receipt or other sufficient substantiation confirming the payment;

(e) the Buyer must, at Settlement, pay the Seller's costs incurred in making the application or obtaining the FIRB Approval (so far as the costs relate to approval of the Buyer's purchase of the Property) in addition to the Price, including any fee or tax paid by the Seller (which the Seller may, but is not required to pay) and the Seller's legal costs which legal costs are agreed to be \$500 plus GST;

(f) the Seller must give Notice to the Buyer that the:

(i) FIRB Approval has been obtained (and on giving of that Notice the condition in this clause is satisfied); or

(ii) FIRB Approval has not been obtained and that this Contract is terminated (in which case the Deposit and any Interest is to be released to the Buyer and neither Party has any Claim against the other); and

(g) if the Seller does not give notice in accordance with sub clause (f) by 6.00 pm on the Approval Date, the Buyer may by Notice to the Seller terminate this Contract (but only before notice is given by the Seller to the Buyer that the FIRB Approval has been obtained).

29.4 The Buyer consents to any information given by the Buyer under this Contract being included in any reports that must be given by the Seller as a condition of any approval given to the Seller under FATA.

- 29.5 Notwithstanding this clause, if the Buyer obtains the consent or a notice that the Treasurer has no objections (or similar) to the Buyer's purchase of the Property and gives a copy of that consent or notice to the Seller, the Seller is deemed to have given Notice to the Buyer that FIRB Approval has been obtained.
- 30. Personal Guarantee**
- 30.1 This clause is an Essential Term and applies if the Buyer:
- (a) is a company; or
  - (b) is a company trustee of a trust.
- 30.2 If this clause applies, the Buyer must arrange that its performance under this Contract is guaranteed, in the form of the Guarantee, by:
- (a) in the case of the Buyer being a company, the directors of the company, and if required by the Seller, the shareholders of the company; and
  - (b) in the case of the Buyer being a company and a trustee of a trust, the directors of the company, and if required by the Seller, the shareholders of the company and the principal beneficiaries and unitholders (if any) of the trust.
- 30.3 The Buyer must procure the Guarantee to be signed by the Guarantors before the Seller signs this Contract.
- 31. Buyer a Trustee**
- 31.1 Unless otherwise disclosed in the Reference Schedule, the Buyer promises the Seller that the Buyer is not buying the Property as trustee of any trust.
- 31.2 If the Buyer is described in the Reference Schedule as being a trustee of a trust, the Parties agree that each promise made by the Buyer in this Contract which is in the nature of a representation or a warranty is made by the Buyer in both its own capacity and in its capacity as trustee of the relevant trust and on this basis, is true.
- 31.3 If the Buyer is described in the Reference Schedule as being a trustee of a trust, then the Buyer represents and warrants to the Seller that:
- (a) the Buyer is the sole trustee of the trust;
  - (b) the Buyer enters into this Contract as part of the due administration of the relevant trust and that this Contract is for the benefit of the relevant trust and its beneficiaries;
  - (c) the Buyer is empowered by the trust instrument for the relevant trust to enter into and perform this Contract in its capacity as trustee of the trust (there being no restriction on or condition of it doing so);
  - (d) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust instrument for the relevant trust for it to enter into and perform this Contract;
  - (e) no property of the relevant trust has been re-settled or set aside to any other trust;
- (f) the relevant trust has not been terminated and no event for the vesting of the assets of the trust has occurred;
  - (g) the trust instrument for the relevant trust complies with all applicable laws;
  - (h) the Buyer has complied with its obligations and duties under the trust instrument for the relevant trust and at law;
  - (i) the Buyer has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability undertaken under to this Contract; and
  - (j) the Buyer will, upon request, deliver to the Seller copies of all documents establishing or amending the trust or making appointments under the trust.
- 31.4 Each of the Buyer's representations and warranties in clause 31.3 are repeated, with respect to the facts and circumstances, at the time, at Settlement.
- 32. Age of Majority**
- The Buyer, if a natural person, whether buying as a trustee of a trust or for its own benefit, warrants and represents to the Seller that the Buyer is at least 18 years of age at the Contract Date.
- 33. Insolvency or Death of Buyer**
- 33.1 The Buyer is in default of an Essential Term of this Contract, if, before Settlement, the Buyer:
- (a) being a company:
    - (i) resolves to go into liquidation;
    - (ii) enters into a scheme of arrangement for the benefit of its creditors;
    - (iii) is ordered to be wound up or is placed in provisional liquidation; or
    - (iv) is put into the control of a receiver and manager, official manager or administrator; or
  - (b) being a natural person enters into a scheme of arrangement, composition or assignment with or in favour of its creditors or becomes bankrupt.
- 33.2 If before Settlement the Buyer dies then the Seller may terminate this Contract. If this happens:
- (a) the Deposit and Interest must be released to the Buyer's estate or trustee as the case may be; and
  - (b) neither Party has any further Claim against the other Party.
- 33.3 For the purposes of this clause "Buyer" includes any of the parties that comprise the Buyer.

**J DEPOSIT**

**34. Deposit**

34.1 The Parties nominate the Deposit Holder as trustee for the purposes of the BCCM Act.

34.2 The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. This is an Essential Term. The Deposit Holder will hold the Deposit until a Party becomes entitled to it.

34.3 The Buyer is in default if the Buyer:

- (a) does not pay any part of the Deposit when required;
- (b) pays any part of the Deposit by a post-dated cheque; or
- (c) pays any part of the Deposit by a cheque which is dishonoured on presentation.

34.4 The Parties authorise and direct the transfer to the Deposit Holder of any amounts paid by the Buyer to third party deposit holders under expression of interest or similar arrangements to be credited as part payment of the Deposit by the Buyer under this Contract.

**35. Deposit Holder Authority, Release and Indemnity**

35.1 The Parties agree that:

- (a) this Contract constitutes a written instruction from the Parties to the Deposit Holder to hold the Deposit on the terms described in this Contract; and
- (b) the Deposit Holder holds the Deposit and any Interest as stakeholder, with authority to pay the Deposit and any Interest to the Party that the Deposit Holder reasonably believes is entitled to the Deposit and any Interest under the terms of this Contract.

35.2 Provided that the Deposit Holder has acted honestly and in good faith, each Party releases the Deposit Holder from and separately indemnifies the Deposit Holder in respect of any liability for any loss or damage suffered or incurred by the Party as a direct or indirect consequence of or in connection with any act or omission on the part of the Deposit Holder related to its duties as stakeholder, including, without limitation, where the Deposit Holder pays the Deposit (and any Interest) to a Party and it is subsequently determined that the payee was not entitled to the Deposit.

35.3 The Parties acknowledge and agree that:

- (a) the Deposit Holder is a third party intended to take the benefit of this clause within the meaning of section 55 of the PLA;
- (b) that the Deposit Holder's acceptance of the Deposit is taken to be acceptance of the benefit of this clause; and
- (c) the Deposit Holder is entitled to rely on the release and indemnity contained in this clause, notwithstanding that it is not a party to the Contract.

**36. Investment of Deposit**

36.1 The Parties authorise and direct the Deposit Holder to invest the Deposit. The Deposit Holder may invest the Deposit with a Bank selected by the Deposit Holder on terms and at an interest rate determined by the Deposit Holder in its discretion.

36.2 The Deposit Holder is not required to invest the Deposit:

- (a) unless the Buyer is a Foreign Interest, until the Buyer gives the Deposit Holder its tax file number;
- (b) unless the Deposit paid in cash equals at least 10% of the Price;
- (c) until the whole of the Deposit is paid;
- (d) if the Settlement Date is anticipated to be within 90 days after the Contract Date; or
- (e) if the Buyer has notified the Seller that it intends to substitute a cash payment of the Deposit with a Compliant Bank Guarantee in accordance with this Contract.

36.3 The Deposit Holder is not liable to either Party for any loss occasioned by any:

- (a) delay or failure in investing the Deposit; or
- (b) break costs or other fees being levied on or deducted from the Interest.

36.4 The Parties acknowledge that as a condition of funding for the construction of the Scheme, the financier may require that the Deposit be invested with that financier at an interest rate determined by the financier. The Parties direct the Deposit Holder to comply with any such requirement and must not Object if this occurs.

36.5 The Deposit Holder may at any time, for bona fide purposes, including after a request by the Seller, terminate the investment of the Deposit and re-invest the Deposit and Interest accrued to that time with an alternate Bank or other financial institution selected by the Deposit Holder on terms and at an interest rate determined by the Deposit Holder in its discretion.

36.6 The Parties may provide the Deposit Holder with their tax file number (if any) and must provide any other information or assistance necessary for the purpose of the investment. The Buyer acknowledges that if it does not provide its tax file number to the Deposit Holder, any Interest will be subject to withholding tax. The Party entitled to the Interest must pay any tax on the Party's entitlement.

36.7 The Parties indemnify the Deposit Holder for the costs of preparing and lodging any income tax return required in respect of the investment of the Deposit and authorise the Deposit Holder to deduct those costs from the Interest.

36.8 The Deposit Holder is authorised to terminate the investment of the Deposit at a reasonable time before the Settlement Date so that the Deposit and Interest will be available at or immediately after Settlement.

36.9 The Deposit is invested at the risk of the Party who is ultimately entitled to it. The Deposit Holder is not liable for any loss or if diminution occurs in value arising out of the investment of the Deposit. All persons claiming any

beneficial interest in or over the Deposit are deemed to take with notice of and subject to the protection conferred by this clause upon the Deposit Holder.

36.10 Any Interest held by the Deposit Holder is held in trust until a Party is entitled to it under this Contract or at law. The Interest is not held by the Deposit Holder by way of Deposit but under an unrelated trust and under no circumstances is the Seller entitled to receive any of the Interest before this Contract is settled or terminated.

36.11 The Parties agree that the Deposit Holder will have no liability to either Party arising out of any withholding tax, fees or charges (including break fees or early redemption charges) being withheld or charged in respect of interest earned on the Deposit, irrespective of whether or not the Buyer notified the Deposit Holder of its tax file number.

36.12 The Party who is entitled to the Interest (and if more than one, in proportion to the entitlement) authorises the Deposit Holder to retain from the amount of the Interest, the sum of \$165.00 (including GST) in payment to the Deposit Holder for attendances associated with the investment of the Deposit. The retention amount is to be released to the Deposit Holder for its absolute benefit after (and not before) Settlement or termination of the Contract (as the case may be).

**37. Entitlement to Deposit & Interest**

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

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

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

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

37.3 Any Interest payable to the Buyer may be paid within a reasonable period after Settlement. The Buyer cannot require the Interest to be paid at Settlement.

37.4 Any Interest payable may be paid in any manner convenient to the Deposit Holder including payment to the Buyer by way of a cheque payable to the trust account of the Buyer's Solicitor or by way of electronic funds transfer to the trust account of the Buyer's Solicitor.

**38. Bank Guarantee**

38.1 Instead of paying the Deposit as a cash payment, the Buyer may lodge with the Seller's Solicitor a Compliant Bank Guarantee.

38.2 If the Buyer has already paid cash Deposit, the Buyer may at any time elect to replace that cash Deposit with a Compliant Bank Guarantee.

**NOTE: The requirements for a Compliant Bank Guarantee must be strictly met.**

**39. Non-Compliant Guarantee**

39.1 The Seller may, in its discretion, accept from the Buyer as security for payment of the Deposit a Non-Compliant Guarantee to be lodged with the Seller's Solicitor. If that happens:

- (a) the Seller may at any time direct the Buyer to replace the Non-Compliant Guarantee with a Compliant Bank Guarantee or cash Deposit; and
- (b) the Buyer must, as an Essential Term, comply with the direction within 10 Business Days after the date the direction is made.

**40. Calling on Deposit Guarantee**

40.1 Without limiting any other right or remedy of the Seller including those under this Contract or any right under statute or at common law, if the Buyer breaches or fails to comply with any term of this Contract, the Seller may direct the Seller's Solicitor to call on any Compliant Bank Guarantee or Non-Compliant Guarantee (if the terms of the Non-Compliant Guarantee permit a call to be made without termination).

40.2 The Seller or the Deposit Holder is not required to notify the Buyer that:

- (a) a Compliant Bank Guarantee or Non-Compliant Guarantee is due to expire and must be replaced; or
- (b) a call is to be made on a Compliant Bank Guarantee or Non-Compliant Guarantee,

as a pre-condition to a call being made.

40.3 If the Seller's Solicitor calls upon a Compliant Bank Guarantee or Non-Compliant Guarantee, the proceeds received must be dealt with as the Deposit in accordance with the relevant provisions of the BCCM Act and the terms of this Contract.

40.4 The Seller's Solicitor is not liable for the loss of a Compliant Bank Guarantee or Non-Compliant Guarantee or for making any call on or demand under a Compliant

Bank Guarantee or Non-Compliant Guarantee unless that action occurs as a result of or in consequence of an act committed or omitted in personal, conscious or fraudulent bad faith by the Seller's Solicitor. All persons claiming any beneficial interest in or over such an instrument are deemed to take with notice of and be subject to the protection conferred by this clause upon the Seller's Solicitor.

- 40.5 The Buyer must not do anything which may cause a Compliant Bank Guarantee or Non-Compliant Guarantee to be withdrawn, revoked, compromised, terminated or limited in any way. This is an Essential Term.

## K PRICE

### 41. **Payment of Price**

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

### 42. **GST**

#### 42.1 **Interpretation**

In this clause:

- (a) unless expressly stated otherwise, words or expressions which are not defined, but which have a defined meaning in GST Law, have the same meaning as in the GST Law.
- (b) **Buyer's ATO Settlement Confirmation** means the confirmation to be given by the Buyer to the Commissioner in the approved form of the actual Settlement Date.
- (c) **Buyer's ATO Withholding Notice** means the notification to be given by the Buyer to the Commissioner in the approved form of the GST Withholding Amount.
- (d) **GST Withholding Amount** means the amount that the Buyer is required to withhold on account of GST from the Price and pay to the Commissioner as notified by the Seller in the GST Withholding Notice.
- (e) **Seller's GST Withholding Notice** means the notification to be made by the Seller under section 14-255 of Schedule 1 to the TA Act which states whether or not the Buyer is required to make a payment of a GST Withholding Amount.
- (f) **TA Act** means the *Taxation Administration Act 1953 (Cth)*.

#### 42.2 **Amounts for payment expressed inclusive of GST**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are inclusive of GST.

#### 42.3 **Margin scheme**

The Parties agree that the margin scheme is to apply in working out the amount of GST on the supply of the real property under this Contract.

#### 42.4 **GST Withholding**

If a GST Withholding Amount is required to be paid in respect of the supply of the Property under this Contract:

- (a) the Seller must serve a Seller's GST Withholding Notice, as may be amended or updated from time to time, not later than 10 Business Days prior to the Settlement Date;
- (b) the Buyer or the Buyer's agent must, as an Essential Term, complete and lodge the Buyer's ATO Withholding Notice and serve evidence of having done so to the Seller and to the Seller's Solicitor by no later than 5 Business Days prior to the Settlement Date;
- (c) the Buyer or the Buyer's agent must, as an Essential Term, serve a Notice with:
  - (i) the Buyer's Lodgement Reference Number and Payment Reference Number (or other relevant identification number) issued by the Commissioner upon lodgement of the relevant form or notification; and
  - (ii) the Settlement Date, on and as a condition of Settlement; and
- (d) the Seller, for the purposes of clause 41 **Payment of Price**, directs the Buyer to pay to the Seller on Settlement a Bank Cheque in favour of the Commissioner for the GST Withholding Amount.

42.5 The Parties must co-operate with each other and take all reasonable steps to comply with their respective obligations under Subdivision 14-E of Schedule 1 to the TA Act including:

- (a) provision of any information reasonably requested by the other Party for the purposes of determining whether a GST Withholding Amount will be payable or for completing any form or making any notification to the Commissioner; and
- (b) making any necessary additions or amendments to this Contract to address any requirement under the GST law or TA Act.

#### 42.6 **Buyer's ATO Settlement Confirmation**

- (a) The Buyer authorises the Seller's Solicitor to act as the Buyer's agent (and in doing so the Seller's Solicitor is not the agent of the Seller) to give the Buyer's ATO Settlement Confirmation to the Commissioner or registrar.
- (b) The Buyer declares that the information contained in the documents provided to the Seller's Solicitor under sub-clause 4(c) and (d) is true and correct and authorises the Seller's Solicitor to submit this information to the Commission in the Buyer's ATO Settlement Confirmation.

#### 42.7 **Electronic Settlement**

If Settlement is to be conducted by way of Electronic Settlement, the Seller and the Buyer will be taken to have complied with clause 42.4(d) if the Financial

Settlement Schedule within the Electronic Workspace specifies payment of the GST Withholding Amount to the account nominated by the Commissioner.

42.8 **Effect on other rights and obligations**

Except as expressly set out in this clause, the rights and obligations of the Parties under this Contract are unchanged.

42.9 **Other GST Provisions**

42.10 This clause 42 does not merge on Settlement or termination of this Contract.

42.11 This clause 42 binds any other entity which is or becomes the supplier or recipient of the supply of the Property or any other supply under or by reason of this Contract.

42.12 If this Contract requires a Party to pay for, reimburse, contribute to, or pay any expense or liability incurred by the other Party, the amount the payer must pay will be the amount of the expense or liability plus the amount of GST payable in respect of that payment, but reduced by the amount of any input tax credit which the other party is entitled to in respect of the expense or liability.

43. **Adjustments**

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

43.2 Outgoings are apportioned on the basis that:

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

43.3 Outgoings must be apportioned, unless specified otherwise:

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

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

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

- (a) the Scheme Land (if there was a separate valuation for the Lot); or
- (b) the Principal Scheme Land (if there was no separate valuation for the Lot or the Scheme Land).

43.6 If there is no separate valuation for the Lot, but there is a separate valuation for the Scheme Land, then the land

tax amount for apportionment purposes for the Lot is to be determined using the following formula\*:

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

Where:

**Amount** = amount of land tax payable on the Scheme Land determined in accordance with this clause.

**IE** = interest Lot Entitlement for the Lot.

**AIE** = aggregate of interest Lot Entitlements for all lots in the Scheme.

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

$$\text{Amount} \times \frac{\text{IE}}{\text{AIE}} \times \frac{\text{ASL}}{\text{AP}}$$

Where:

**Amount** = amount of land tax payable on the Principal Scheme Land determined in accordance with this clause.

**IE** = interest Lot Entitlement for the Lot.

**AIE** = aggregate of interest Lot Entitlements for all lots in the Principal Scheme.

**ASL** = the area of the Scheme Land.

**AP** = the area of the Principal Scheme Land.

\*If the application of a formula specified above is not possible or results, in the reasonable opinion of the Seller's Solicitor, in an unfair apportionment or adjustment of land tax as between the Parties, then land tax will be adjusted in the manner determined by the Seller's Solicitor, acting reasonably, to achieve a fair apportionment or adjustment.

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

43.9 If land tax is unpaid at the Settlement Date and the Office of State Revenue or its equivalent body advises that it will issue a final clearance for the Lot on payment of a specified amount (**Specified Amount**), then the following will apply:

- (a) at the election of the Seller, land tax will be apportioned on the greater of the Specified Amount or the amount calculated under this clause;
- (b) the Seller will provide a cheque for the Specified Amount at Settlement and promptly pay it to the Office of State Revenue after Settlement; and
- (c) land tax will be treated as paid at Settlement.

43.10 The amount paid by the Seller for body corporate and building insurance for the Principal Scheme is to be adjusted using the following formula\*\*:

$$P^{***} \times \frac{SIE}{SAIE} \times \frac{IE}{AIE}$$

Where:

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

**SIE** = interest Lot Entitlement for the Scheme.

**SAIE** = aggregate of interest Lot Entitlements for all lots in the Principal Scheme.

**IE** = interest Lot Entitlement for the Lot.

**AIE** = Aggregate of interest Lot Entitlements for all lots in the Scheme.

43.11 The amount paid by the Seller for body corporate and building insurance for the Scheme is to be adjusted using the following formula\*\*:

$$\frac{P^{***} \times IE}{AIE}$$

Where:

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

**IE** = interest Lot Entitlement for the Lot.

**AIE** = Aggregate of interest Lot Entitlements for all lots in the Scheme.

\*\*If the application of the formula specified above is not possible or in the reasonable opinion of the Seller's Solicitor results in an unfair apportionment or adjustment of insurance as between the Parties, then insurance will be adjusted in the manner determined by the Seller's Solicitor, acting reasonably, to achieve a fair apportionment or adjustment.

43.12 For the purposes of determining any areas for apportionment purposes, a certification from the surveyor engaged by the Seller for the Scheme or another surveyor selected by the Seller will be binding on the Parties in the absence of manifest error.

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

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

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

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

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

## L SETTLEMENT

### 44. Settlement Date

44.1 When the Conditions Subsequent in relation to recording of the Community Management Statement and registration of the Plan have been satisfied, the Seller will give Notice to the Buyer calling for Settlement provided that:

(a) the earliest date such Notice may be given is the date on which the Seller reasonably forms the opinion that all other Conditions Subsequent will be satisfied within 14 days (**Earliest Notice Date**); and

(b) such Notice may be given at any time on or after the Earliest Notice Date but must be given not later than 90 days after the last of the other Conditions Subsequent have been satisfied.

44.2 The Settlement Date is the date **14** days after the Seller gives Notice to the Buyer calling for Settlement.

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

44.4 The Seller may, at any time before Settlement, by Notice to the Buyer extend on any number of occasions the Settlement Date by up to an aggregate period of 90 days. If this happens, time remains of the essence of this Contract notwithstanding the extension(s).

**Explanatory Note:** The Seller is required to provide to the Buyer Title to the Property at Settlement. In some circumstances, the Seller may not be in a position to provide that Title because of the need to deal with objections or address caveats lodged over Title. The ability to extend the Settlement Date allows the Seller an opportunity to deal with such matters before Settlement.

### 45. Time & Place for Settlement

45.1 Unless Settlement is to be effected by way of Electronic Settlement, Settlement must take place:

- (a) in Brisbane;
- (b) at a time nominated by the Seller, and if no time is nominated at 3.00 pm;
- (c) at a place nominated by the Seller, and if no place is nominated at the offices of the Seller's Solicitor in Brisbane; and
- (d) between 9.00 am and 5.00 pm.



45.2 If, on the Settlement Date, the other Conditions Subsequent have not been satisfied, subject to the clause titled **Sunset Date**, the Settlement Date is automatically extended for a period of 2 Business Days on the basis that time remains of the essence. This condition continues to apply until all the Conditions Subsequent have been satisfied.

**46. Extensions of the Settlement Date**

46.1 The Buyer acknowledges that nothing in this clause:

- (a) is a representation by the Seller that it will agree to an extension of the Settlement Date;
- (b) creates any entitlement for the Buyer to an extension of the Settlement Date; or
- (c) alters time being of the essence of this Contract.

46.2 If the Buyer requests an extension of the Settlement Date, the Seller may agree to the extension in the Seller's discretion. If the Seller agrees to the extension, the Seller may elect to charge the Buyer \$330.00 (for each extension of the Settlement Date granted) to reimburse the Seller its legal costs of the extension.

46.3 The Buyer must pay any amounts payable under this clause as directed by the Seller at, and conditional upon, Settlement.

46.4 Notwithstanding any other term of the Contract, if the Settlement Date is extended:

- (a) by agreement between the Parties;
- (b) by a Party exercising a right to extend the Settlement Date; or
- (c) by operation of a provision of the Contract which extends the Settlement Date,

time is of the essence in respect to the extended Settlement Date.

**47. Transfer Documents**

47.1 The Seller must prepare the Transfer Documents, but may leave out personal details regarding the Buyer, other than the name of the Buyer.

47.2 The Buyer must, within 2 Business Days after direction by the Seller, give to the Seller further particulars as required by the Seller to enable the Seller to prepare the Transfer Documents.

47.3 The Buyer must, within 10 Business Days after engaging any solicitor to act on its behalf in relation to this Contract and the conveyance of the Lot pursuant to it, cause that solicitor to give the Seller's Solicitor an undertaking of their firm that the Transfer Documents will be used for stamping purposes only pending Settlement so that, at the relevant time, the Seller can lend the Transfer Documents to that solicitor without charge for stamping prior to Settlement.

47.4 On receipt of a signed undertaking from the Buyer's Solicitor that the Transfer Documents will be used for stamping purposes only pending Settlement, the Seller will, at the relevant time, lend the Transfer Documents to the Buyer's Solicitor without charge for stamping before Settlement.

47.5 The consideration to be shown in the Transfer Documents is to include the cost of any upgrades, variations or similar amounts payable by the Buyer, whether in this Contract or a separate agreement.

47.6 Each Party authorises the other Party and their solicitors to make any necessary amendments to the Transfer Documents so as to rectify any inaccuracies or complete any omissions.

47.7 This clause does not apply if the Transfer Documents are to be prepared and provided by way of Electronic Settlement.

**48. Settlement Statement**

48.1 Prior to Settlement, the Seller may give to the Buyer a Settlement Statement.

48.2 If the Buyer considers that there is an error or omission in respect of anything contained in the Settlement Statement, the Buyer must, within 3 Business Days after receipt of the Settlement Statement, and in any event at least 2 hours before the time nominated by the Seller for Settlement on the Settlement Date, give to the Seller a Notice which clearly specifies the error or omission.

48.3 If the Buyer does not comply with the requirements of clause 48.2:

- (a) the Settlement Statement is taken to be correct and to list all the Settlement Materials; and
- (b) the Buyer cannot later Object or assert that the Seller was not ready, willing or able to effect Settlement because of an error or omission in the Settlement Statement.

48.4 The purpose of this clause is to require the Buyer to notify the Seller well before the time for Settlement if the Buyer considers that there has been an error in the calculation of Settlement adjustments and figures or an omission in the list of Settlement Materials and to prevent the Buyer from Objecting at or after Settlement on the basis of an error or omission that could have been drawn to the Seller's attention earlier.

48.5 The Seller may, at any time before Settlement, give the Buyer an updated or amended Settlement Statement and the provisions of this clause apply to that updated Settlement Statement.

48.6 Nothing in this clause prevents:

- (a) the Seller from recovering any shortfall in payment of the Price after Settlement;
- (b) the Buyer from recovering any over payment of the Price after Settlement; or
- (c) a Party from requiring any adjustment to be made between the Parties after Settlement in relation to Outgoings if it is discovered that Outgoings were not apportioned in accordance with this Contract.

**49. Procedure at Settlement**

49.1 In exchange for payment of the Balance Price and, if applicable, release of the cash Deposit, the Seller must, as an Essential Term (but subject to clauses **Error! Reference source not found.** and **Error! Reference**

source not found.), provide or deliver to the Buyer at Settlement:

- (a) separate indefeasible Title;
- (b) unstamped Transfer Documents capable of immediate registration (after stamping) if not already in the possession of the Buyer's Solicitor or otherwise contained in the Electronic Workspace for Electronic Lodgement with the Queensland Land Registry; and
- (c) vacant possession of the Lot.

49.2 The Buyer will only be entitled to receive a PPS Release from a Secured Party for a Security Interest registered on the PPSR where the Property is specifically described (in whole or part) under that Security Interest. The onus of demonstrating that the Sold Property is specifically described (in whole or part) under a Security Interest is on the Buyer and is to be demonstrated to the Seller on or before 7 days before the Settlement Date. The Seller is not required to provide the Buyer with a PPS Release from a Secured Party in respect of any Security Interest over "all present and after acquired property" (or similar) of the Seller.

49.3 Subject to clause 49.4, if the Lot is subject to a mortgage or other adverse encumbrance which is not authorised or permitted by this Contract then the Buyer must accept at Settlement a signed release of mortgage or withdrawal, surrender, removal or revocation of such encumbrance by whatever means permitted by the relevant authority (**Release**).

49.4 If Settlement is to be effected by way of Electronic Settlement, the Seller will give and the Buyer must accept:

- (a) at Settlement:
  - (i) an effective electronic release of mortgage; and
  - (ii) any other electronic Releases, which are contained in the Electronic Workspace for Electronic Lodgement with the Queensland Land Registry; and
- (b) after Settlement, any other Releases not given under clause 49.4(a)(ii).

49.5 No paper certificate of title for the Title will be provided at Settlement.

## M **DEFAULT**

### 50. **Buyer's Default**

50.1 **Buyer's Default – Breach of Essential Term or fundamental breach of intermediate term – the Seller may affirm or terminate**

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

- (b) No affirmation or termination of this Contract is effective unless it is in the form of a Notice.

- (c) A failure to make an election to affirm or terminate this Contract by any particular date is not to be taken as a waiver of any rights of the Seller under this Contract.

### 50.2 **If Seller affirms**

If the Seller affirms this Contract under clause 50.1(a), in addition to enforcing this Contract, it may sue the Buyer for damages, specific performance or both.

### 50.3 **If Seller terminates**

If the Seller terminates this Contract under clause 50.1(a), the Seller may do any or all of the following:

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

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

Without limiting any other right or remedy of the Seller including those under this Contract or any right under statute or at common law, if the Buyer breaches or fails to comply with a term of this Contract other than a term of the kind described in clause 50.1(a), the Seller may do either or both of the following:

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

### 50.5 **Resale**

If the Seller terminates this Contract and the Property is resold, then the Seller may recover from the Buyer any and all losses suffered or incurred caused by the Buyer's breach, including, without limitation:

- (a) the difference (if any) between the Balance Price and the price for which the Property is sold on resale;
- (b) its Costs of any repossession, failed attempt to resell and the resale;
- (c) any additional loss or Cost connected with the requirement for the Seller to continue to hold the Property, such as, without limitation, debt costs;
- (d) any Outgoings that would have been payable by the Buyer if this Contract had settled from the original due Settlement Date to the date of settlement of the resale of the Property inclusive; and
- (e) any legal or other costs and outlays incurred by the Seller as a consequence of the Buyer's default.

50.6 **Buyer Indemnifies Seller**

The Buyer indemnifies the Seller for all and any loss the Seller suffers and Costs the Seller incurs as a result of:

- (a) a breach of warranty, representation or promise of the Buyer; or
- (b) the Buyer's breach or failure to comply with any term or condition of this Contract,

such Costs, to the extent they comprise legal fees and outlays, are to be assessed on the full indemnity basis.

51. **Seller's Default**

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

- (a) Without limiting any other right or remedy of the Buyer including those under this Contract or any right under statute or at common law, if the Seller breaches or fails to comply with an Essential Term or makes a fundamental breach of an intermediate term of this Contract, the Buyer may affirm or terminate this Contract.
- (b) No affirmation or termination of this Contract is effective unless it is in the form of a Notice.
- (c) A failure to make an election to affirm or terminate this Contract by any particular date is not to be taken as a waiver of any rights of the Buyer under this Contract.

51.2 **If Buyer affirms**

If the Buyer affirms this Contract under clause 51.1(a), in addition to enforcing this Contract, it may sue the Seller for damages and, if the Conditions Subsequent have been satisfied, for specific performance or both.

51.3 **If Buyer terminates**

If the Buyer terminates this Contract under clause 51.1(a), the Buyer may do any or all of the following:

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

51.4 **Seller's default – breach of other term**

Without limiting any other right or remedy of the Buyer including those under this Contract or any right under statute or at common law, if the Seller breaches or fails to comply with a term of this Contract other than a term of the kind described in clause 51.1(a), the Buyer may do either or both of the following:

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

51.5 **Seller Indemnifies Buyer**

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

51.6 **Insolvency of Seller**

If the Seller:

- (a) resolves to seek the appointment of a liquidator, provisionally or otherwise;
- (b) enters into a scheme of arrangement for the benefit of its creditors;
- (c) is ordered to be wound up or is placed in provisional liquidation;
- (d) has its affairs, business or assets placed under the control of a receiver, receiver and manager, official manager, administrator or external controller; or
- (e) on any basis whatsoever becomes insolvent or unable to pay its debts,

it will not be taken to be in default of or to have breached this Contract. The Buyer will, in that circumstance, continue to be bound by this Contract, according to its terms as though the event had not occurred.

52. **Interest**

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

- (a) in the case of the Buyer, pay to the Seller interest on that money either at Settlement or upon the Seller obtaining a judgement against the Buyer requiring the Buyer to pay the money or earlier agreement, as the case may be; and
- (b) in the case of the Seller, pay the Buyer interest on that money at the same time as the money is paid by the Seller,

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

52.2 If the Buyer fails to effect Settlement on the due date, then the Seller may elect to charge interest (which is payable at Settlement) on the full Price without making any allowance for the Deposit having been paid by the Buyer (this clause is included in this Contract to take into account that the Seller does not receive the Deposit until Settlement).

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

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

53.1 Despite any Seller Default and notwithstanding anything express or implied in this Contract, the Buyer must not terminate, cancel, avoid, rescind or declare itself not bound by this Contract unless:

- (a) the Buyer has first given the Seller a Notice (**Remedy Notice**):
  - (i) giving particulars of the Seller Default;

- (ii) offering the Seller the opportunity to remedy the Seller Default by a specified date, being a reasonable time (given the nature of the Seller Default) but in any event not less than 10 Business Days after the Remedy Notice is given to the Seller; and
  - (iii) specifying that the Buyer intends terminating, cancelling, avoiding, rescinding or declaring itself not bound by this Contract (as the case may be) if the Seller Default is not remedied by the date specified in the Remedy Notice; and
- (b) the Seller has not remedied the Seller Default complained of in the Remedy Notice by the date specified.

53.2 In this clause, the expression **Seller Default** includes:

- (a) a wrongful act or omission;
- (b) a breach of or failure to comply with any term or condition;
- (c) conduct which amounts to repudiation, wrongful termination or mistake of fact; or
- (d) any failure to comply with a Statutory Obligation,

by the Seller relating to this Contract.

## N **LEGISLATIVE DISCLOSURE & OTHER ISSUES**

**Explanatory Notes:** *The Seller is proceeding with this Contract on the assumption that the Buyer has received, at the proper time, all of the statutory notices and statements so as to give lawful effect to this Contract and that the promises made by the Buyer throughout the Contract are true and correct. If anything in this Section is incorrect, then it needs to be brought to the attention of the Seller prior to the Buyer entering into this Contract. This is important as the Seller will be seeking funding and will be withholding the Property from sale pending Settlement based on the enforceability of this Contract.*

### 54. Disclosure

#### 54.1 Application of clause

The promises and acknowledgements of the Buyer in this clause are subject to the clause 54.8 **Retraction of Acknowledgements or Promises**.

#### 54.2 Statutory Notices & Statements

The Buyer acknowledges receiving, before signing this Contract:

- (a) the Section 213 Statement duly signed by the Seller or duly signed by a person authorised by the Seller to do so;
- (b) details of the Proposed Lot Entitlement and exclusive rights (if any), as set out in the Disclosure Documents;

- (c) a copy of the Proposed Principal CMS and the Proposed CMS included in the Disclosure Documents; and
- (d) the Identification Plan, included in the Disclosure Documents, clearly identifying the Lot.

#### 54.3 **Separate Notices & Statements**

- (a) The Buyer acknowledges that the Statutory Disclosure Statements including the notices and statements acknowledged to have been received under clause 2 are each separate notices and statements.
- (b) If the Seller has not itself signed the Statutory Disclosure Statements contained in the Disclosure Documents, the Seller affirms that it has authorised the signatory to bind the Seller to the information contained in the Disclosure Documents and to sign, date and give the Statutory Disclosure Statements as the Seller's authorised signatory and agent.

#### 54.4 **Buyer's Promise – Section 213 Statement**

- (a) The Buyer promises the Seller that, before the Buyer signed this Contract, the Buyer:
  - (i) received the Section 213 Statement, signed by the Seller or the Seller's authorised signatory or agent; and
  - (ii) reviewed the contents of the Section 213 Statement and had the opportunity to take legal advice about those statements and this Contract.
- (b) The Buyer acknowledges that:
  - (i) the Identification Plan satisfies the requirements for a disclosure plan under Section 213AA of the BCCM Act;
  - (ii) the Section 213 Statement is substantially complete for the purposes of Section 213 of the BCCM Act; and
  - (iii) the Buyer cannot Object, given the Buyer's promises and acknowledgments under this clause, as a result of the content or any deficiency in the Identification Plan or the Section 213 Statement.

#### 54.5 **Buyer Promises and Representations**

The Buyer promises the Seller that the Buyer:

- (a) has read the statements described in this clause;
- (b) is aware of its rights in respect of any cooling off period applicable to this Contract;
- (c) is aware of the requirements of and its rights under the BCCM Act; and
- (d) is aware of the conditions set out in this Contract as regards to the rights of the Seller to make Variations,

and if any of the matters referred to in clauses 54.5(a) to 54.5(d) are incorrect, the Buyer promises the Seller that it has taken legal advice or had an opportunity to take legal advice in relation to those matters before signing this Contract and chose not to take legal advice.

54.6 **Use of Property & other Promises**

- (a) In this clause 54.6 **Personal Use** means the use of the Property by the Buyer for personal, domestic or household use or consumption.
- (b) The Buyer promises the Seller and represents that:
  - (i) its acquisition of the Property is for the purposes of Personal Use or non-Personal Use as elected by the Buyer in the Reference Schedule and that the election noted on the Reference Schedule is correct;
  - (ii) the Buyer has, before signing this Contract, read this Contract and the disclosure, materials, statements and notices contained within the Disclosure Documents (or has been given an opportunity to do so) and took or was given an opportunity to take legal advice and any other advice the Buyer considered appropriate about this Contract and the content of the Disclosure Documents;
  - (iii) the Buyer, before signing this Contract, was given an effective opportunity by the Seller or the Seller's agents to negotiate the terms of this Contract, including an opportunity to reject its terms, and that, accordingly, in making this Contract, the Buyer has either negotiated those terms or chosen not to negotiate those terms;
  - (iv) the Buyer agrees that the terms of this Contract are fair, reasonable and balanced as between the interests of the Buyer and the Seller, having regard to the technical, planning, regulatory, economic and commercial uncertainties faced by the Seller in undertaking the development of the the Principal Scheme or the Scheme and the relative commercial burdens and risks to which each of the Seller and the Buyer is exposed; and
  - (v) the Buyer agrees that the Contract Terms, in particular terms that:
    - (A) permit the Seller to make Variations;
    - (B) permit termination and dealings with the Deposit and Interest on termination;
    - (C) limit the ability of the Buyer to Object or participate in the Body Corporate objecting to specified matters; and

- (D) limit the right of the Buyer to object to, or refrain from providing consent for, the completion of the Principal Scheme or the Scheme;
- (E) provide a right of the Deposit Holder to invest the Deposit on terms and at an interest rate determined by the Deposit Holder in its total discretion; and
- (F) are in relation to the status of Promotional Materials,

are reasonably necessary and required to protect the legitimate interests of the Seller given the nature of the Property sold (it being sold "off the plan") and given the technical, planning, regulatory, economic and commercial uncertainties faced by the Seller in undertaking the development of the the Principal Scheme, the Scheme and the relative commercial burdens and risks to which each of the Seller and the Buyer is exposed.

54.7 **Proposed Principal CMS & Proposed CMS**

The Buyer acknowledges that:

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

54.8 **Retraction of Acknowledgements or Promises**

- (a) Subject to clause 54.8(b), if the Buyer wishes to retract or vary any or all of the acknowledgements, representations or promises made in this Contract, the Buyer must give Notice to the Seller of such within 5

Business Days after the Contract Date in which case:

- (i) the Buyer is taken to have given the Seller notification that the Buyer terminates this Contract;
- (ii) the Seller is taken to have accepted the Buyer's notification of termination;
- (iii) this Contract is at an end and neither Party has any further Claim against the other; and
- (iv) the Deposit paid and Interest must be released to the Buyer.

(b) Clause 54.8(a) does not apply if:

- (i) the Buyer has given to the Seller an instrument which has the effect of waiving any cooling off period in relation to this Contract; or
- (ii) the Buyer has obtained pre-contract legal advice in relation to this Contract.

#### 55. Section 213 Statement

The Buyer acknowledges that the Section 213 Statement comprises only that portion of the material contained in the Disclosure Document that is necessary to constitute a "disclosure statement" as required by Section 213 of the BCCM Act. For avoidance of doubt, the Section 213 Statement does not comprise the entire contents of the Disclosure Document.

#### 56. Section 214 BCCM Act

56.1 The Parties agree that a **Further Statement** may take the form of a Notice, but a Notice will not be considered to be a **Further Statement** unless the Notice specifically states that it is intended to constitute a Further Statement.

56.2 If the Buyer proposes to give a Notice terminating this Contract under Section 214(4) of the BCCM Act, despite the provisions of that Section, the Buyer agrees that it will deal with the Seller justly and fairly by giving to the Seller before or at the same time that any such Notice is given, written details clearly outlining how the Buyer would be materially prejudiced if compelled to complete this Contract given the extent to which the Section 213 Statement was, or has become, inaccurate.

56.3 If the annual contributions payable by the Buyer are up to 10% more than the annual contributions set out in the Section 213 Statement, the Buyer agrees that the Buyer:

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

56.4 Nothing contained in clause 56.3 implies a term in this Contract or an agreement between the Parties that the Buyer will be materially prejudiced if the annual contributions payable by the Buyer are 10% or more than the annual contributions set out in the Section 213 Statement.

56.5 If anything occurs, the possibility of which has been disclosed to the Buyer prior to entry into this Contract, the Buyer agrees that the Buyer:

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

#### 57. Other Engagements

57.1 The Seller directs the attention of the Buyer to that part of the Section 213 Statement (contained in the Disclosure Documents) titled "*Other Engagements*" or similar. As foreshadowed in that disclosure, the Seller may cause the Body Corporate to engage other service contractors or body corporate managers for various purposes but the terms of any such engagements and other particulars required to be included in a Section 213 Statement are not known as at the Contract Date. The Seller may give a Further Statement if, after the Contract Date, it is determined that the Body Corporate, when it is established or changed, will enter into one or more further engagements of service contractors or body corporate managers (for example, for the administration, supply and maintenance of utility infrastructure or the supply of utilities). If that happens, the Buyer must not Object and agrees that:

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

#### O POWER OF ATTORNEY

#### 58. Power of Attorney

58.1 So far as is lawful, the Buyer irrevocably appoints, jointly and severally, the Seller and each director of the Seller, to be an attorney of the Buyer and its company nominee (if the Buyer is a company) (**Attorney**) on the terms and for the purposes set out in this clause.

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

- (a) in relation to Body Corporate matters:
  - (i) to appoint or revoke the appointment of a voter for a general meeting of the Body Corporate within the meaning of "voter" for a general meeting of the Body Corporate under the Regulation Module and to give all necessary notifications of the appointment or revocation to the Body Corporate so that the details of the appointment or

revocation may be entered into the Body Corporate roll;

(ii) to request that a meeting of the Body Corporate be held and to attend and vote (or do either) in the name of the Buyer at all or any meetings of the Body Corporate or the Committee, to the exclusion of the Buyer if present; and

(iii) to complete, sign and lodge any voting paper or any other document (including a proxy, appointment form, notice asking for an extraordinary general meeting, corporate owner nominee notification form or other representative notification form and any other notice under the Regulation Module) to allow the Seller to call for any meeting or to attend at or vote in the name of the Buyer at all or any meetings of the Body Corporate or of the Committee,

in respect of any motion or resolution for or relating to any one or more of the matters or things set out in the Power of Attorney disclosure contained in the Disclosure Documents;

(b) in relation to matters to effect a novation or assignment by the Seller of this Contract, to complete, sign, seal (as "Buyer) give and deliver to any party:

- (i) any Novation Deed;
- (ii) any instrument to waive any cooling off period applicable as a result of the novation; and
- (iii) any other document to give effect to a novation or assignment;

(c) in relation to other matters, to complete, sign and lodge any instrument of consent to any application for approval for the further carrying out of the development of the Principal Scheme or the Scheme or any part of them providing such application is for an approval which, if granted and given effect to, will not have a direct material adverse effect on the use or the value of the Property.

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

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

(a) Seller obtains a benefit for itself or a third party from doing so;

(b) exercise involves a conflict of interest or duty; or

(c) Attorney has a personal interest in doing so.

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

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

58.7 While the Power of Attorney remains in effect, the Buyer must not transfer or assign the Lot except to a transferee or assignee who has first given a power of attorney in favour of the Seller and its directors, if a company, on the same terms as the Power of Attorney. If the Buyer does not comply with this provision, the Buyer indemnifies the Seller against all loss and damage incurred by the Seller as a result.

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

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

## P STAGED SETTLEMENTS

### 59. **Staged Settlements**

59.1 The Seller may elect to effect settlement of the sale of the various lots within the Principal Scheme or the Scheme at different times on a staged basis (**Staged Settlements**).

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

59.3 The Buyer will not Object to the Seller effecting Staged Settlements and the Buyer will not Object to continued construction activities within the Principal Scheme or the Scheme including:

(a) building improvements or any other things done on or within the Principal Scheme Land or the Scheme Land including any noise, nuisance or other inconvenience which may arise from those activities;

(b) the use by the Seller and any party authorised by the Seller of parts of the Principal Scheme or the Scheme (including Common Property) for construction access and the storage of building materials, vehicles, equipment or fuel;

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

(d) parts of the Principal Scheme or the Scheme and Common Property, including community

facilities not being complete or available for use by the Buyer upon Settlement,

despite these things occurring after Settlement even if for an extended period after Settlement.

## **Q** GENERAL & OTHER MATTERS

### **60. Contract Execution, Counterparts & Exchange**

60.1 This Contract is considered to be executed by a Party if affixed with a manuscript signature or initials or a typed name of the Party or a person, firm or company holding the requisite authority to bind the relevant Party.

60.2 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one and the same instrument.

60.3 This Contract, including counterparts of it, may be exchanged by any means, including electronically.

60.4 If the Buyer or any agent of the Buyer received this Contract or the Disclosure Documents (either for signing or as a signed instrument) from the Seller or any agent of the Seller electronically, the Buyer promises the Seller that the Buyer consented to the giving of the documentation and any other materials by way of electronic means before receiving the documentation and materials.

60.5 Each person who signs this Contract as attorney for a Party warrants and represents to the other Party that at the date the person executed this Contract they had not received any notice or information of the revocation of the power of attorney appointing them.

60.6 Each person who signs this Contract for a Party, by placing their signatures, warrants and represents to the other Party that, at the date the person signed this Contract;

- (a) they are a Party to this Contract; or
- (b) they are duly authorised by the relevant Party to sign this Contract; and
- (c) if an officer of a company, the company duly resolved to enter into and sign this Contract.

### **61. Status of Promises**

Where in the terms of this Contract or in the Special Conditions a promise has been made by a Party:

- (a) the promise amounts to a representation, warranty and assurance made by the Party to the other Party; and
- (b) the Party to whom the promise is made is entitled to rely on that promise.

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

The Buyer acknowledges that the Seller has agreed to enter into this Contract in reliance upon the various promises, acknowledgments and agreements made by the Buyer in this Contract and, but for those promises, acknowledgements and agreements, the Seller would not have entered into the Contract.

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

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

63.2 The Buyer:

- (a) promises the Seller that it will not make any false declaration in respect of this Contract and the conveyance of the Property made pursuant to it; and
- (b) consents to the Seller disclosing any such rebate, concession or valuable consideration to any Buyer's financier or any other interested party; and
- (c) will not Object to the Transfer Documents being prepared by the Seller in accordance with all relevant practice notes, directions and the like issued by the Queensland Law Society, the Queensland Land Registry and the Queensland Office of State Revenue.

### **64. Legislative Termination Rights**

64.1 This clause applies if:

- (a) the Seller reasonably forms a view that the Buyer is or has become entitled to cancel, withdraw from or terminate this Contract or declare itself not bound by this Contract under any legislative provision (**Legislative Termination Right**); and
- (b) the Legislative Termination Right has not expired and will not expire within a period less than 21 days after the date that the right arose.

64.2 If this clause applies, then:

- (a) the Seller may send the Buyer a new contract that is on the same terms as this Contract, except for only those changes to the form of contract or to related documents that are required so that the Legislative Termination Right will not apply to the new contract (**New Contract**); and
- (b) if the Buyer does not sign and return the New Contract to the Seller with 15 Business Days from when it is sent to the Buyer, then the Seller may by Notice to the Buyer terminate this Contract and the Deposit and any Interest must then be refunded to the Buyer and neither Party will have any Claim further against the other Party with respect to this Contract or its termination.

To be clear, the Buyer is not obliged to enter into a proposed New Contract.



64.3 A termination right under clause 64.2(b) may be exercised by the Seller at any time until either:

- (a) a New Contract is formed; or
- (b) the Legislative Terminate Right may no longer be exercised; or
- (c) this Contract is completed.

64.4 If a New Contract is formed, then this Contract is terminated and the Deposit and any Interest must be held as if it had been paid and earned under the New Contract and the Parties so instruct the Deposit Holder.

## 65. Interpretation

### 65.1 References

Reference to:

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

### 65.2 Use of word "including"

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

### 65.3 Use of the word "or"

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

### 65.4 Headings

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

### 65.5 Parties

- (a) If a Party consists of more than one person, this Contract (including each agreement, representation, warranty and promise) binds them and is for their benefit jointly and each of them individually.
- (b) A Buyer that is a trustee is bound both personally and as a trustee.

### 65.6 Statutes and Regulations

- (a) Reference to statutes includes, if the context requires, any regulations, codes, policy statements and similar things concerning them.
- (b) Reference to statutes and regulations includes all statutes and regulations amending, consolidating, or replacing them.

### 65.7 Inconsistencies

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

## 65.8 Interpretation to Favour Binding Contract

- (a) Subject to the terms of this Contract, the Parties acknowledge that it is their intent that the Seller is obliged to sell and the Buyer is obliged to buy the Property on the terms set out in this Contract.
- (b) If a provision of this Contract or any legislation is (in the context of whether or not this Contract is valid and binding) open to interpretation, then such provision or legislation must be read or interpreted so that the Contract is found to be valid and binding on the Parties.

## 65.9 Clauses permitting Variations

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

## 65.10 No limitation of statutory rights

A provision in this Contract that limits the right of a Party to Object does not affect the statutory rights of the Party.

## 66. Performance of Contract

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

66.2 In this Contract, unless specified otherwise, where the Seller is entitled to exercise:

- (a) its discretion, the Seller may do so in its absolute discretion; and
- (b) a right, the Seller may exercise that right in its absolute discretion.

## 67. Time

67.1 Time is of the essence of this Contract, except regarding a time of day for Settlement.

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

## 68. Measurement of Time

In relation to measurement of time:

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

## 69. Due date not Business Day

If the date or the last date for a Notice to be given, an act to be performed or a payment to be made falls on a Saturday, Sunday or public holiday then the date or the

last date (as the case may be) will be the Business Day next following such date.

**70. Things to be done by 5.00pm**

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

**71. Contract Date**

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

**72. Risk**

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

**73. Costs and Transfer Duty**

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

73.2 The Buyer:

- (a) must pay all transfer duty on this Contract and the Transfer Documents;
- (b) indemnifies the Seller in respect of all liability for payment of transfer duty on this Contract and the Transfer Documents; and
- (c) is estopped from relying on its own failure to pay transfer duty, in arguing that this Contract and any other document should not be admitted into evidence in any proceedings about this Contract or the transaction recorded in it.

**74. Notices**

74.1 Notices under this Contract must be in writing and must be signed by or on behalf of a Party.

74.2 Unless stipulated otherwise under this Contract, Notices given by a Party's solicitor will be treated as given with that Party's authority.

74.3 Notices are considered to be signed if affixed with a manuscript mark, signature or initials or a typed name of a person, firm or company whether conveyed electronically, digitally or otherwise.

74.4 In the case of the Buyer, Notices are effectively given if:

- (a) delivered or posted to the address of the Seller's Solicitor;
- (b) sent to the facsimile number of the Seller's Solicitor;
- (c) sent by electronic facsimile or similar method to the facsimile number of the Seller's Solicitor; or
- (d) sent by email or other digital means to the relevant email or other digital address of the Seller's Solicitor,

which are set out in the Reference Schedule as updated from time to time.

74.5 In the case of the Seller, Notices are effectively given if:

- (a) delivered or posted to the address of the Buyer or the Buyer's Solicitor;
- (b) sent to the facsimile number of the Buyer or the Buyer's Solicitor;
- (c) sent by electronic facsimile or similar method to the facsimile number of the Buyer or the Buyer's Solicitor; or
- (d) sent by email or other digital means to the relevant email or other digital address of the Buyer or the Buyer's Solicitor,

which, subject to clause 74.6, are set out in the Reference Schedule as updated from time to time.

74.6 In the case of a Notice to the Buyer's Solicitor, an email address includes any email address that the Buyer's Solicitor or any employee of the Buyer's Solicitor has used for sending emails to the Seller's Solicitor concerning the Contract.

74.7 Posted Notices will be treated as given 3 Business Days after posting.

74.8 Notices sent by facsimile including electronic facsimile or similar method will be treated as given when the sender obtains a clear transmission report or other confirmation of delivery.

74.9 Notices sent by email are taken to be given 1 hour after they are sent, unless the sender receives notification that the email failed to be delivered to the recipient. If asked by the sender of an email to confirm receipt, the recipient must confirm receipt within a reasonable period of request.

74.10 For the purposes of Section 11 and 12 of the *Electronic Transactions Act (Queensland) 2001 (Qld)* and the *Electronic Transactions Act 1999 (Cth)*, the Parties consent to Notices and any other information being given by electronic communication.

74.11 The Buyer authorises the Seller and the Seller's Solicitor to act as its agent to give notice to the Body Corporate after Settlement that the Buyer has become the owner of the Lot. The Seller is authorised to use the latest contact particulars of the Buyer given to it by the Buyer or the Buyer's Solicitor for the purposes of giving the notice to the Body Corporate and if no such particulars have been given, then the Buyer's particulars in the Reference Schedule.

74.12 If the Buyer is no longer represented by a solicitor and has no current known contact particulars for the giving of a Notice, the Seller may give Notice to the Buyer's last known contact particulars even if it is known to the Seller that the Buyer may not receive the Notice. The Parties' intention is that the onus is on the Buyer to ensure that the Seller at all times has current particulars of the Buyer in order to enable the Seller to give Notice.

74.13 This clause 74.13 applies if the address of the Buyer included in the Reference Schedule is an address outside of Australia. If this clause 74.13 applies, then in any proceedings concerning the Contract, the Seller may effect service on the Buyer by registered post and the

service is effective whether or not the Buyer has notice of the proceedings.

#### 75. Variation of Contract

- 75.1 An amendment or variation of this Contract is not effective unless it is in the form of a Notice in writing and signed by or on behalf of the Parties by a person holding the requisite authority to bind the relevant Party.
- 75.2 Only a partner of the Seller's Solicitors' firm, the Seller itself if a natural person or a director, executive or manager of the Seller has authority to bind the Seller to an amendment or variation of this Contract.
- 75.3 The Buyer itself or any partner or employee of the Buyer's Solicitors' firm has authority to bind the Buyer to an amendment or variation of this Contract.

#### 76. Waiver

- 76.1 No waiver of any right under this Contract takes effect unless in the form of a Notice in writing, signed by or on behalf of the Party bound, by a person holding the requisite authority to bind the relevant Party. The provisions of the clause 75 **Variation of Contract** will apply to any question of authority under this clause.
- 76.2 In the absence of an effective waiver, no failure or forbearance by a Party to insist upon any right to performance of a condition or obligation of the other Party can amount to, under any circumstances, a waiver, an election between existing rights, a representation sufficient to ground an estoppel or a variation whereby that other Party is relieved or excused from performance of such condition or obligation.
- 76.3 A waiver is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### 77. Severance

If it is held by a Court that:

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

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

#### 78. Rights After Settlement

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

#### 79. Applicable Law

Queensland law applies to this Contract.

#### 80. Further Acts

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

80.2 Without limiting clause 80.1, if requested to do so by the Seller, the Buyer must, at its own expense and within a reasonable period of time (and, in any event, before Settlement):

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

80.3 If the rights of the Buyer under this Contract are significantly diminished as a result of a request by the Seller pursuant to clause 80.2, the Buyer must carry out the requested action if:

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

80.4 Without limiting clause 80.1, if requested to do so by the Seller, the Buyer must, at its own expense, do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is lawful to do so) or resolve any ambiguity in this Contract so as to facilitate this Contract being considered by the Seller's construction financier as a presale for construction funding purposes.

80.5 Without limiting clause 80.1 or clause 80.2, if the Contract has been exchanged electronically, the Seller may require that the Contract is again exchanged in hard (physical paper copy) copy. If that happens, the Buyer agrees to exchange hard a copy of the Contract when directed to do by the Seller. This may be required, for example, in order that a funder of the Seller agrees to accept the sale made under this Contract to be a qualifying pre-sale for construction funding qualification purposes. This is an Essential Term.

**81. Marketing**

- 81.1 The Seller reserves the right to use any lot as a display unit for the sale of lots. The Buyer agrees not to Object to such use of any lot or to the display of advertising material on the Common Property.
- 81.2 The Seller (together with its guests and invitees) reserves the right to use any part of the Principal Scheme or the Scheme including the Common Property for the purposes of promotional and sales functions. The Buyer agrees not to Object to that use of such areas by the Seller.

**82. Instalment Contracts**

- 82.1 In this clause, the following additional definitions apply:

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

**Prescribed Deposit** has the meaning given to the word **deposit** in Section 71 of the PLA Act.

- 82.2 Clause 82.3 applies if:

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

- 82.3 If this clause 82.3 applies, then:

- (a) the Buyer consents, for the purposes of Section 73(1) of the PLA Act, to the Seller:
  - (i) mortgaging or charging the Principal Scheme Land or the Scheme Land or any part of it (including the Lot) on terms and conditions the Seller in its discretion determines; and
  - (ii) selling parts of the Principal Scheme Land or the Scheme Land (for example, other lots in the Scheme) to other buyers; and
- (b) the Buyer consents, for the purposes of Section 74(2)(a) of the PLA Act, to the removal of the caveat by the Seller.

- 82.4 Despite any contrary provision in this Contract, the Buyer is not bound to make a payment or payments of amounts which total in excess of the Prescribed Deposit without becoming entitled to receive a conveyance in exchange for the payment or payments.

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

- 82.6 The provisions of this clause are mandatory overriding provisions and override any other provision of this Contract including the Special Conditions.

**83. Priority Notice**

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

**84. Assignment**

- 84.1 The Seller may transfer or assign its interest or a part of its interest in the Lot or any parcel of land from which the Lot is to be created (or any part of it) to another person (**Dealing**).

- 84.2 If the Seller effects or proposes to effect a Dealing, the Seller will, in the Seller's total discretion either:

- (a) novate this Contract to a Third party; or
- (b) assign this Contract to a Third Party,

as contemplated by this clause.

- 84.3 The Buyer consents:

- (a) to any Dealing;
- (b) if the Seller elects to novate this Contract to a Third Party, to the novation; and
- (c) if the Seller elects to assign this Contract to a Third Party, to the assignment,

including for the purpose of any consent required under the Property Law Act 1974 (Qld).

- 84.4 If the Seller proposes to effect a Dealing and the Seller elects to novate this Contract to the Third Party:

- (a) before the Dealing is completed, the Seller must procure the Third Party to execute a Novation Deed;
- (b) the Buyer waives any cooling off period applicable as a result of the Dealing and the Buyer must, if requested by the Seller or Third Party, as an Essential Term, execute and return to the Seller any document to confirm such waiver within 5 Business after request;
- (c) if the Seller requires, the Buyer and any person who has guaranteed the performance of the Buyer's obligations under the Contract to the Seller (**Guarantor**) must be parties to the Novation Deed to covenant in favour of the Third Party to perform their respective obligations under this Contract and the Guarantee. The Buyer must, as an Essential Term, execute, and must procure the Guarantor to execute, the Novation Deed within 5 Business Days after request; and
- (d) on completion of the Dealing, the Seller is released from any further obligations under this Contract.

- 84.5 If the Seller effects or proposes to effect a Dealing, and the Seller elects to assign the benefit of this Contract to the Third Party:

- (a) the Third Party will have the benefit of the Seller's rights under this Contract as though the Third Party was named as Seller;

- (b) the Seller will be taken to have performed its obligations under this Contract to the Buyer if those obligations are performed by the Third Party;
- (c) for avoidance of doubt, for the purposes of this Contract, the Buyer must accept Transfer Documents signed by the Third Party; and
- (d) no new contract is created as between the Third Party and the Buyer.

84.6 With respect to the Deposit;

- (a) on completion of a Dealing with a novation of this Contract as contemplated by clause 84.4: or
- (b) on an assignment of this Contract by the Seller as contemplated by clause 84.5:
  - (i) the Seller may transfer to the Third Party's nominated deposit holder the Deposit (and the Seller and the Buyer irrevocably authorise the Deposit Holder to facilitate such transfer); or
  - (ii) if the payment of the Deposit has been secured by the provision of a Compliant Bank Guarantee or Non-Compliant Guarantee which is assignable, the Seller may assign the instrument to the Third Party;
  - (iii) if the payment of the Deposit has been secured by the provision of a Compliant Bank Guarantee or Non-Compliant Guarantee which is not assignable, the Buyer must, as an Essential Term, within 10 Business days after direction by the Seller, provide to the Third Party's nominated deposit holder a replacement Compliant Bank Guarantee or cash Deposit.

84.7 The Buyer may not assign or transfer or attempt to assign or transfer the Buyer's interest under this Contract without the prior written consent of the Seller. This is an Essential Term.

84.8 The Seller may:

- (a) mortgage or charge its interest in the in the Lot or any parcel of land from which the Lot is to be created;
- (b) obtain further advances on the security of the Lot or any parcel of land from which the Lot is to be created; and
- (c) enter into joint ventures or other agreements in connection with the development of the Principal Scheme or the Scheme or any parcel of land from which the Lot is to be created.

The Buyer consents to the Seller doing any of the things mentioned in this subclause including for the purpose of any consent required under section 73 of the *Property Law Act 1974* (Qld).

## 85. NBN Co Limited

85.1 Clause 85.2 applies if the Principal Scheme or the Scheme is part of or eligible to participate in the National Broadband Network or similar. The Seller makes no representation to the Buyer that the Principal Scheme or the Scheme will be part of the National Broadband Network or similar. However, the Seller may at any time in its discretion enter into an agreement with NBN Co for the installation of network infrastructure in and to the Principal Scheme or the Scheme to form part of the National Broadband Network.

85.2 If this clause 85.2 applies:

- (a) the Buyer must, if directed at any time (including after Settlement) by the Seller, do anything required by the Seller to enable the Seller or any related party of the Seller to comply with its obligations to NBN Co. This includes:
  - (i) transferring ownership in utility infrastructure and networks to NBN Co; and
  - (ii) granting exclusive and non-exclusive licenses for the use of utility infrastructure and networks to NBN Co.
- (b) the Seller may cause the Principal Body Corporate or the Body Corporate to:
  - (i) Notwithstanding clause 19.1, grant licences, including exclusive licences, over broadband network fibre and associated infrastructure on such terms as it considers appropriate (including the ability by the licensee to grant sub-licences) and as required by telecommunications suppliers (such as NBN Co Limited); or
  - (ii) waive, in accordance with clauses 17(5), 18(3) and 19(2) of Schedule 3 of the *Telecommunications Act 1997 (Cth)* (**Schedule 3**), any right the Principal Body Corporate or the Body Corporate has to be given notice in relation to any activity to be undertaken on the Principal Scheme Land or the Scheme Land or within the Principal Scheme, the Scheme or any ancillary area to them under Schedule 3, and any right the Principal Body Corporate or the Body Corporate may have to object to those activities.

85.3 The Buyer must not Object to any matter set out in this clause 85 or to the Seller exercising any rights set out in this clause 85.

## 86. Name

86.1 The Buyer agrees that as at the Contract Date, the Seller intends the name for the Principal Scheme and the Scheme to be the Name (respectively). If the relevant Authority or the Queensland Land Registry refuses to accept the Name, or the Name is not available due to any other reason or the Seller wishes to change

the name for the Principal Scheme or the Scheme, the Seller may select an alternative name. If this happens, the Buyer agrees that it must not Object.

86.2 The Seller may deal with the Name in any manner the Seller considers fit and may do any one or more of the following (and the Buyer must not Object if the Seller does so):

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

## 87. Privacy

87.1 The Buyer consents to:

- (a) the collection of the Personal Information;
- (b) the use and disclosure by the Seller of the Personal Information for the purposes of enabling the Seller to comply with its obligations under, associated with and arising in connection with this Contract, including any obligations to any third parties, such as the Seller's financiers, manager providing caretaking and letting services to the Scheme and utility providers;
- (c) the Buyer's details becoming part of the "Mirvac database";
- (d) the disclosure to, and use by, third party contractors and service providers (any of whom may be located outside Australia) engaged by the Seller of the Personal Information for the purpose of:
  - (i) enabling the Seller to comply with and fulfil its obligations under or arising pursuant to or in connection with this Contract;
  - (ii) procuring the provision to the Buyer of products and services contemplated by this Contract;
  - (iii) providing the Buyer with information relating to future activities of the Seller;
  - (iv) undertaking research in connection with this Contract and future activities of the Seller (including to request feedback on the products and services provided by Mirvac); and
- (e) the use and disclosure by the Seller of the Personal Information for the purposes of

enabling the Seller to enforce its rights under this Contract.

87.2 By signing this Contract, the Buyer agrees to Mirvac using its personal information to promote its products and services. If the Buyer no longer wishes to receive promotional information from Mirvac, the Buyer may advise Mirvac of its wish. The Mirvac Group Privacy Policy (available on [www.mirvac.com](http://www.mirvac.com)) contains information about how you may send your request to Mirvac.

87.3 The Buyer acknowledges that:

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

87.4 In this clause 87, the following words have the following meanings:

- (a) **Personal Information:** means all personal information (as defined in the Privacy Act relating to the Buyer, including all personal information set out in this Contract and otherwise disclosed by the Buyer to the Seller whether prior to or after the date of this Contract.
- (b) **Privacy Act:** means the Privacy Act 1988 (Cth) and any regulations, ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instrument made or issued under that Act, as amended from time to time.

87.5 **Privacy Officer:** means "Privacy Officer", the Mirvac Group, Level 26, 60 Margaret Street, Sydney NSW 2000, Ph: (02) 9080 8000, Email: [privacy@mirvac.com](mailto:privacy@mirvac.com).

## 88. Resale of Property

If, prior to Settlement, the Buyer enters into a contract, option agreement or other arrangement for the sale of the Property, the Buyer must immediately give to the Seller:

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

## 89. Early Possession

89.1 This clause applies if, at any time prior to Settlement, the Seller agrees to allow the Buyer early possession of the

Property. The Seller has no obligation to allow the Buyer early possession.

89.2 If this clause applies the Buyer takes possession of the Property on the following conditions:

- (a) the Property is at the risk of the Buyer from the date of possession;
- (b) the Buyer must insure the Property to the Seller's satisfaction;
- (c) the Buyer must keep and maintain the Property in good and substantial repair;
- (d) the Buyer must not alter or add to the Property in any way;
- (e) entry into possession is under a licence personal to the Buyer (**Licence**);
- (f) no relationship of landlord and tenant is created;
- (g) the Seller may, in its discretion, revoke the Licence at any time by Notice to the Buyer;
- (h) on revocation of the Licence, the Buyer must forthwith yield up possession of the Property to the Seller;
- (i) the Buyer must not let or part with possession or occupancy of the Property;
- (j) the Seller or any nominee of the Seller may at any reasonable time before Settlement enter and view the Property and do anything or carry out any works that the Seller considers necessary for the preservation or repair of the Property; and
- (k) the Buyer indemnifies the Seller against any Claim incurred or suffered by the Seller directly or indirectly as a result of the Buyer's possession.

89.3 If the Buyer requests early possession, then the Buyer must, at and conditional upon Settlement, pay the Seller's legal fees of \$330.00 (Inc GST) to the Seller's Solicitor for facilitating the request (whether or not possession is granted).

89.4 If the Buyer takes early possession then, at the election of the Seller, the adjustment of Outgoings for the purposes of clause 43 will be done on the following basis:

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

## 90. Provision of Information

90.1 The Buyer acknowledges that the Seller may provide information regarding the the Principal Scheme and the Scheme (including a copy of the certificate of classification, certificate of currency for insurance, etc) to the Buyer by way of an online data room or other electronic arrangement.

90.2 If information is provided in this manner, the Seller will inform the Buyer and provide all necessary information

to access the data room to the Buyer and the Buyer must not Object to information being provided in this manner.

## 91. Entire Agreement

This Contract contains the entire terms agreed between the Seller and the Buyer in relation to the sale and purchase of the Property and supersedes all prior negotiations.

## 92. Electronic Conveyancing

92.1 This clause:

- (a) has priority over any other clause or Special Condition to the extent of any inconsistency;
- (b) applies if the Seller gives Notice to the Buyer that it applies;
- (c) ceases to apply if the Seller gives Notice to the Buyer that it no longer applies; and
- (d) ceases to apply (and the Seller cannot give a Notice pursuant to clause 92.1(b)) if the Buyer gives Notice (which may not be given until after the Seller gives Notice to the Buyer calling for Settlement) to the Seller no less than 2 Business Days before the first due Settlement Date that the Buyer cannot effect Settlement and lodgement electronically for bona fide reasons.

92.2 Settlement and lodgement of the Electronic Conveyancing Documents necessary to record the Buyer as registered owner of the Lot will be conducted electronically in accordance with this clause and the ECNL.

92.3 Each Party must:

- (a) be, or engage a representative who is, a subscriber for the purposes of the ECNL; and
- (b) ensure that all other persons for whom that Party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the ECNL.

92.4 The Seller may open the Electronic Workspace at any time considered appropriate by the Seller.

92.5 Within a reasonable period after the Seller gives Notice to the Buyer calling for Settlement, the Seller will:

- (a) invite the Buyer to the Electronic Workspace;
- (b) include the Settlement Date in the Electronic Workspace; and
- (c) nominate a time for Settlement (being the time of the day for locking of the Electronic Workspace) in the Electronic Workspace being no later than 4pm.

92.6 The Buyer must promptly:

- (a) accept the Seller's invitation to the Electronic Workspace;
- (b) enter the Electronic Workspace and:
  - (i) accept the Settlement Date; and

- (ii) accept the time for Settlement nominated by the Seller or nominate an alternate time for Settlement on the Settlement Date;
- (c) invite any mortgagee of the Buyer to the Electronic Workspace; and
- (d) complete and Digitally Sign the Transfer Documents where required by the Buyer.
- 92.7 If the time for Settlement is not agreed, the Parties agree that the time for Settlement is 2pm on the Settlement Date and each Party must nominate that time as the time for Settlement (being the time of the day for locking of the Electronic Workspace) in the Electronic Workspace.
- 92.8 If the Parties have agreed to amend the Settlement Date or the Settlement Date is extended pursuant to the Contract Terms:
- (a) the Seller will update the Settlement Date in the Electronic Workspace;
- (b) the Buyer must accept the updated Settlement Date in the Electronic Workspace; and
- (c) the provisions of clauses 92.6(b)(ii) and 92.7 apply to the agreement for the time for Settlement on the updated Settlement Date.
- 92.9 Within 2 Business Days after receipt of the Settlement Statement from the Seller (and in any event, within 1 Business Day prior to the time for Settlement on the Settlement Date), the Buyer must enter the Electronic Workspace to prepare the relevant particulars in the Financial Settlement Schedule that relate to the Buyer/source accounts.
- 92.10 If any part of the Price is to be paid to discharge an Outgoing, the Buyer must:
- (a) if required by the Seller, pay that amount to the Seller's Solicitor's trust account and the Seller must pay the amount to the relevant authority following Settlement; or
- (b) for other amounts, pay the amount to the destination account nominated by the Seller.
- 92.11 Settlement occurs when the Electronic Workspace records that the Financial Settlement has occurred.
- 92.12 A Party is not in default of this Contract to the extent it is prevented from complying with an obligation because the other Party or the other Party's financier has not done something in the Electronic Workspace.
- 92.13 Any rights under the Contract or at law to terminate this Contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.
- 92.14 The Parties must:
- (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement;
- (b) do everything else required in the Electronic Workspace to enable Settlement to occur on the Settlement Date; and
- (c) do everything reasonably necessary to assist the other Party to trace and identify the recipient of any mistaken payment and to recover any mistaken payment.
- 92.15 Where Settlement is to occur in the Electronic Workspace, the Buyer acknowledges and agrees that any bank guarantee or similar instrument provided by the Buyer to secure the payment of the Deposit cannot be returned via the Electronic Workspace and will be returned to the Buyer within a reasonable period after Settlement.
- 92.16 Each Party is to bear its own costs in connection with Settlement occurring in the Electronic Workspace.
- 92.17 If Settlement fails and cannot occur by 4pm on the Settlement Date because a computer system operated by a participating party is inoperative, neither Party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

### 93. Promotional Materials

- 93.1 The Promotional Materials constitute a depiction of the Seller's intentions in respect of the Principal Scheme and the Scheme as they are at the Contract Date. They are not intended to be, nor should they be treated as, a statement of existing fact as to any aspect of the Principal Scheme or the Scheme.
- 93.2 The Promotional Materials do not form part of the description of the Principal Scheme or the Scheme in this Contract or the Disclosure Documents.
- 93.3 The Promotional Materials are not a representation or warranty by the Seller to the Buyer that:
- (a) the intention of the Seller to carry out the development of the Principal Scheme and the Scheme or to carry it out in any particular manner or sequence or to complete it is fixed and unequivocal;
- (b) the Principal Scheme and the Scheme will be in accordance with the Promotional Materials;
- (c) the Seller owns or will own all of the land required to undertake the Principal Scheme and the Scheme or any part of them;
- (d) the Seller has received or will receive all necessary approvals to undertake the development of the Principal Scheme and the Scheme, or if approvals are received, that they will be satisfactory to the Seller;
- (e) the Seller has funding in place or the financial capacity to undertake the development of the Principal Scheme and the Scheme;
- (f) the Seller has an unequivocal intention to proceed with the entire Principal Scheme and the Scheme as depicted in the Promotional Materials or at all;
- (g) the design features, facilities, improvements and inclusions as shown in the Promotional Materials are final and will form part of the



Principal Scheme and the Scheme as depicted in the Promotional Materials or at all;

- (h) all aspects of the Principal Scheme and the Scheme as shown in the Promotional Materials will be included in the Principal Scheme and the Scheme; and
- (i) the appearance, components and character of the Principal Scheme and the Scheme is fixed and will not change from that which is depicted in the Promotional Materials.

93.4 The Buyer acknowledges that the undertaking of the development of the Principal Scheme and the Scheme is a dynamic process which may change or not be proceeded with, either in part or in whole, for any number of reasons, both before and after the Buyer has entered into the Contract and, as such, the Buyer represents and warrants to the Seller that they have not relied and will not rely on or be induced to enter into this Contract based on the Promotional Materials either in whole or in part.

#### 94. Special Conditions

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

#### 95. Building Covenants

95.1 The Buyer acknowledges that:

- (a) the Property forms part of the Principal Scheme which is a quality residential community; and
- (b) it is necessary and in the interest of all owners within the Principal Scheme that the Seller exercises supervision and control to regulate the design and construction standard of

dwellings, other improvements and landscaping within the Scheme and other matters generally.

95.2 The Buyer warrants and represents to the Seller that the Buyer will comply with the Building Covenants.

95.3 The Buyer must not sell or transfer the Property without first obtaining a covenant from the person taking the interest (**New Buyer**) in favour of the Seller agreeing to be bound by the Building Covenants. The agreement to be obtained from the New Buyer is to be in the form of the Deed Poll.

95.4 The Seller may and reserves the right to:

- (a) vary, exclude or elect not to enforce all or any part of the Building Covenants; and
- (b) interpret the Building Covenants and the intent of the Building Covenants,

in respect of any land within the Scheme in any way it determines in its total discretion.

95.5 The Buyer:

- (a) must not Object to; and
- (b) releases the Seller from any Claim resulting from,

the Seller exercising its rights under clause 95.4, provided that the exercise of such rights does not:

- (i) cause a material detraction from the character or standard of the Principal Scheme; or
- (ii) have a direct material adverse effect on the use or value of the Property.

# DEED POLL - ASHFORD LAND - BUILDING COVENANTS

TO: **MIRVAC QUEENSLAND PTY LTD ACN 060 411 207**

(Developer)

FROM:

.....  
[insert New Owner's name]

.....  
[insert New Owner's name]

.....  
[insert New Owner's address]

.....  
[insert New Owner's address]

(New Owner)

LAND: ..... **Ashford Land**

## BACKGROUND

- A. The New Owner is buying or has agreed to buy the Land.
- B. The Land forms part of a quality residential community known as the **Ashford Land (Estate)**. Accordingly, it is necessary and in the interest of all owners of land in the Estate that the Developer exercises supervision and control so as to ensure quality of the design and construction standard of dwellings, landscaping and improvements within the Estate and other matters generally.
- C. The New Owner is required by the terms of the contract that the New Owner has entered into to buy the Land, to enter into this Deed Poll.

## OPERATIVE PART

- 1. The New Owner represents to and warrants in favour of the Developer that:
  - (a) the New Owner is bound to and will abide by the terms of the **accompanying** Building Covenants (**Building Covenants**) as though the New Owner was the "Buyer" and the Developer was the "Seller" referred to in the Building Covenants;
  - (b) the New Owner agrees not to sell or transfer the Land without first obtaining a covenant from the buyer or transferee in favour of the Developer on the same terms of this Deed Poll.
- 2. The New Owner must pay all costs incurred by the Developer in the enforcement or attempted enforcement of the Building Covenants including legal costs on a solicitor and own client basis.
- 3. The New Owner acknowledges that it will be liable to the Developer for damages incurred by the Developer for any non-compliance with the Building Covenants.
- 4. The New Owner acknowledges that, for any land in the Estate, the Developer has the right, in its total discretion, to vary, exclude or elect not to enforce any of the Building Covenants or to interpret the Building Covenants and the intent of the Building Covenants in a manner that the Developer elects.
- 5. Queensland Law applies to this Deed Poll. The New Owner submits to the jurisdiction of the courts of Queensland.
- 6. This Deed Poll takes effect from the date the New Owner has effected settlement of the contract to buy the Land.
- 7. The New Owner must give to the Developer a copy of this signed and witnessed Deed Poll.

DATED THIS \_\_\_\_\_ 20 \_\_\_\_.

## SIGNED AS A DEED POLL

SIGNED, SEALED AND DELIVERED by the New Owner in the presence of:

)  
)

.....  
New Owner's Signature

.....  
Witness

**THE NEW OWNER'S SIGNATURE MUST BE WITNESSED**

# DEED OF GUARANTEE AND INDEMNITY

## Parties:

|                                                                                                                                                  |             |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| MIRVAC QUEENSLAND PTY LTD ACN 060 411 207                                                                                                        | (Seller)    |
| The Guarantor named in the Reference Schedule (in the Contract)                                                                                  | (Guarantor) |
| Contract for the sale and purchase of the Property to be made between the Seller and the Buyer named in the Reference Schedule (in the Contract) | (Contract)  |

## It is agreed:

1. The Guarantor:
  - 1.1 has requested that the Seller enter into the Contract;
  - 1.2 enters into this Guarantee and Indemnity in consideration for the Seller agreeing to:
    - (a) enter into the Contract at the request of the Guarantor; and
    - (b) pay the Guarantor \$1.00 within 10 Business Days after written demand by the Guarantor to the Seller; and
  - 1.3 acknowledges the receipt of valuable consideration from the Seller for the Guarantor incurring obligations under this Guarantee and Indemnity.
2. The Seller agrees to enter into the Contract at the request of the Guarantor.
3. The Guarantor acknowledges that, under the Contract:
  - 3.1 the Seller may effect a Dealing in favour of another person (**Third Party**); and
  - 3.2 if the Seller effects a Dealing, and the Contract is novated or assigned to the Third Party, the Buyer will be bound to perform the Buyer's obligations under the Contract in favour of the Third Party.
4. The Guarantor unconditionally and irrevocably guarantees:
  - 4.1 to the Seller the due and punctual performance by the Buyer of all of its obligations under the Contract (irrespective of when they are to be performed); and
  - 4.2 if the Contract is novated to the Third Party, the due and punctual performance by the Buyer of all of its obligations under any substitute contract for the sale and purchase of the Property that comes in effect as a result of a Dealing and novation (**Substitute Contract**) (irrespective of when they are to be performed); and
  - 4.3 if the Contract is assigned to the Third Party, the due and punctual performance by the Buyer of all of its obligations under the Contract (irrespective of when they are to be performed).
5. The Guarantor, as a separate undertaking, unconditionally and irrevocably indemnifies the Seller and any Third Party against all liability, damages, costs, expenses and losses of any kind and however arising (including penalties, fines, interest, duties, fees, taxes or legal fees on a full indemnity basis) which the Seller or any Third Party may suffer as a result of or arising directly or indirectly out of:
  - 5.1 any default, breach or non-compliance by the Buyer of the Contract or a Substitute Contract (**Relevant Contract**);
  - 5.2 a breach by the Buyer of any acknowledgement, promise, representation, warranty or the like by the Buyer in a Relevant Contract or otherwise, including any promise, representation, warranty or the like which was incorrect or misleading when made;
  - 5.3 the Buyer having no obligations or being relieved of any obligations or any obligations of the Buyer becoming unenforceable under a Relevant Contract; or
  - 5.4 making, enforcing and doing anything in connection with this Guarantee and Indemnity.
6. The Guarantor agrees that the Guarantor's liability and obligations under this Guarantee and Indemnity are not affected by any:
  - 6.1 termination of a Relevant Contract as a result of any default or breach by the Buyer;
  - 6.2 insolvency, bankruptcy, death, incompetency or winding up of the Buyer or of any Guarantor;
  - 6.3 assignment or novation of a Relevant Contract by the Buyer or the Seller or a Third Party;
  - 6.4 grant of time or other concession to the Buyer by the Seller or a Third Party or to the Seller or a Third Party by the Buyer;
  - 6.5 compromise, waiver, variation or novation of any of the rights of the Seller or a Third Party against the Buyer under a Relevant Contract;
  - 6.6 delay by the Seller or a Third Party in exercising its rights or if the Seller or a Third Party does not sue the Buyer;

- 6.7 acquiescence, acts, omissions or mistakes on the part of the Seller or a Third Party;
  - 6.8 purported rights of the Seller or a Third Party against the Buyer under a Relevant Contract being invalid, void or unenforceable for any reason including by operation of law or statute;
  - 6.9 future variations or alterations to a Relevant Contract agreed between the parties to it, regardless of whether or not the Guarantor has first consented to the variation or alteration and regardless of any prejudice to the Guarantor arising from that variation or alteration;
  - 6.10 other person who was named, intended or required to enter into this Guarantee and Indemnity not having done so or not having done so effectively;
  - 6.11 waiver or other indulgence or the discharge or release of a Buyer or any other person from any obligation;
  - 6.12 guarantee and indemnity from any other person who has entered into this Guarantee and Indemnity not being, for any reason whatsoever, enforceable; or
  - 6.13 other acts, omission, thing or matter whatsoever which, but for this provision, might in any way operate to release or otherwise exonerate or discharge the Guarantor from any of its obligations as surety.
7. This Guarantee and Indemnity:
- 7.1 extends to cover the Buyer's obligations under a Relevant Contract:
    - (a) regardless of any compromise, waiver or variation of any rights against the Buyer under the Relevant Contract; and
    - (b) as amended, varied or replaced, whether with or without the consent of the Guarantor, even if the amendment, variation or replacement imposes additional obligations on the Buyer, beyond those presently in the Relevant Contract; and
  - 7.2 is a continuing guarantee and indemnity and, despite Settlement, remains in full force and effect for as long as the Buyer has any liability or obligation under the Relevant Contract and until all of those liabilities or obligations have been fully discharged.
8. The Guarantor represents to the Seller (and for the benefit of any Third Party) that before the Guarantor entered into this Guarantee and Indemnity the Guarantor read and understood this Guarantee and Indemnity, the Contract and any other associated documents and had taken or been given the opportunity to take legal and other advice the Guarantor considered necessary.
9. If the Seller or a Third Party novates, transfers or assigns its interest in a Relevant Contract in favour of any person or entity (**Assignee**), the benefit of the Guarantor's obligations and indemnities under this Guarantee and Indemnity are assigned to the Assignee and the Guarantor must enter into any document that the Seller or a Third Party or Assignee may reasonably require to confirm the assignment. The Seller or a Third Party may assign the benefit of the Guarantor's obligations and indemnities under this Guarantee and Indemnity without affecting or discharging the Guarantor's liability as surety in any way.
10. The Seller or a Third Party does not have to sue the Buyer or enforce any rights against any person before claiming under this Guarantee and Indemnity.
11. This Guarantee and Indemnity binds each Guarantor individually and all of them jointly.
12. This Guarantee and Indemnity is a separate, collateral instrument to the Relevant Contracts.
13. The liability of the Guarantor is not discharged by payment to the Seller or a Third Party which is later avoided by law. If that occurs, the respective rights and obligations of the Seller or a Third Party and the Guarantor will be restored as if the payment had not been made.
14. Money paid to the Seller or a Third Party by the Guarantor must be applied first against payment of costs, charges and expenses under clause 5, then against other obligations under this Guarantee and Indemnity.
15. If there is any ambiguity in this Guarantee and Indemnity, it is to be interpreted in favour of the Seller or a Third Party. Any void, voidable or illegal term of this Guarantee and Indemnity is to be read down or severed leaving the balance operable.
16. The Guarantor acknowledges and agrees that this Guarantee and Indemnity was signed by the Guarantor before the Seller signed the Contract.
17. This Guarantee and Indemnity may be executed, exchanged and delivered in any manner permitted under the Contract for the execution and exchange of that document (including electronically).
18. **This Guarantee and Indemnity takes effect, is signed and delivered as a deed. The validity of this Guarantee and Indemnity as an agreement between the Seller and the Guarantor is not affected in any way if this Guarantee and Indemnity does not take effect as a deed.**

**WARNING: The Guarantor is agreeing to be legally liable for the performance of the Buyer under the Relevant Contracts.**

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

.....  
Witness  
(witness required unless signed electronically)

.....  
**SIGNATURE – GUARANTOR 1**  
By placing my signature above, I warrant that I am in  
the Guarantor named in the Reference schedule.

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

.....  
Witness  
(witness required unless signed electronically)

.....  
**SIGNATURE – GUARANTOR 2**  
By placing my signature above, I warrant that I am in  
the Guarantor named in the Reference schedule.

**SIGNED SEALED AND DELIVERED AS A DEED** by )  
a duly authorised attorney of **MIRVAC QUEENSLAND** )  
**PTY LTD ACN 060 411 207** in the presence of: )

.....  
Witness  
(witness required unless signed electronically)

.....  
**SIGNATURE – ATTORNEY OF SELLER**

