

KOKO BROADBEACH

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) [Tick as applicable. If not completed, assumed Property being acquired for investment purposes.]
☐ Property being acquired for owner occupier purposes (Personal Use)

Foreign Interest

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

Nationality if Foreign: _____

Property

address Unit No. _____ **Koko Broadbeach** situated at 12 - 14 Elizabeth Avenue, Broadbeach QLD 4218.
description The proposed community title lot _____ as shown on the Identification Plan contained in the Disclosure Documents (**Lot**) with an internal fitout generally in accordance with the Floor Layout Plan and the right to the exclusive use of EU Areas (if any) shown as attaching to the Lot in Schedule E of the Proposed CMS as identified on the Exclusive Use Allocation Plan.

Colour Scheme

☐ Scheme 1 - **Beach**
☐ Scheme 2 - **Classic**
☐ Scheme 3 - **Urban**

If no selection made by Buyer on signing of Contract, Seller will choose and Buyer must not Object to Seller's choice

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.

[SEE NOTE ON FOLLOWING PAGE 2 ABOUT PAYMENT OF DEPOSIT TO HWL EBSWORTH TRUST]

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/Secretary of Buyer or authorised signatory, if company)

Witness

KOKO
BROADBEACH

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; KOKO Broadbeach*

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

CONTRACT - REFERENCE SCHEDULE (CONT.)

Agent	<i>name</i>			
	<i>address</i>			
	<i>telephone</i>		<i>fax</i>	
Deposit Holder		HWL EBSWORTH LAWYERS		
Seller	<i>name</i>	MPG ELSTON PTY LIMITED ACN 606 476 868		
	<i>address</i>	Unit 9, 2431 Gold Coast Highway, Mermaid Beach QLD 4218	<i>telephone</i>	(07) 5570 9666
Seller's Solicitor	<i>name</i>	HWL EBSWORTH LAWYERS (ATTN: Lauren Prestwood)		
	<i>address</i>	Level 19, 480 Queen Street (GPO Box 2033) Brisbane Qld 4000		
	<i>telephone</i>	(07) 3169 4811	<i>facsimile</i>	1300 368 717
	<i>email</i>	lprestwood@hwle.com.au		

Seller's Signature

SIGNED ON BEHALF of MPG ELSTON PTY
LIMITED ACN 606 476 868 by its duly authorised
signatory:

)
)
)

NO PRE-CONTRACT REPRESENTATIONS – IMPORTANT NOTICE

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

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

The Buyer should set out below any promises, representations, warranties or assurances that have been made to the Buyer by the Seller or any sales or marketing agent of the Seller that have, to any extent, induced the Buyer to buy the Property or on which the Buyer has to any extent relied, in its decision to buy the Property, but which are not included in this Contract or the Disclosure Documents:

Promise, representation, warranty or assurance allegedly made	Person who is alleged to have said it	Date made

Buyer's Acknowledgment about Seller's Representations

- The Buyer acknowledges that no sales or marketing agent has authority from the Seller to make promises or representations or to give warranties or assurances on behalf of the Seller, other than those contained in this Contract or the Disclosure Documents.
- The Buyer confirms and represents to the Seller that the Buyer has not been induced to enter into this Contract by, and has not relied on, any promises, representations, warranties or assurances other than those which are contained in this Contract or the Disclosure Documents or which are hand written above.
- The Buyer understands that:
 - if it leaves the table above blank, it is representing and warranting to the Seller that it has not been induced by and has not relied on anything said or done by or on behalf of the Seller to enter into this Contract, other than what is contained in this Contract or the Disclosure Documents;
 - except for this representation and acknowledgement, the Seller would not have entered into this Contract; and
 - by the acknowledgment, confirmation and representation given in paragraphs 1, 2 and 3 above, it is likely that the Buyer will not be able to sue the Seller in respect of any promise, representation, warranty or assurance other than those set out above or which are set out elsewhere in this Contract or the Disclosure Documents.

Buyer 1 Initials

Buyer 2 Initials

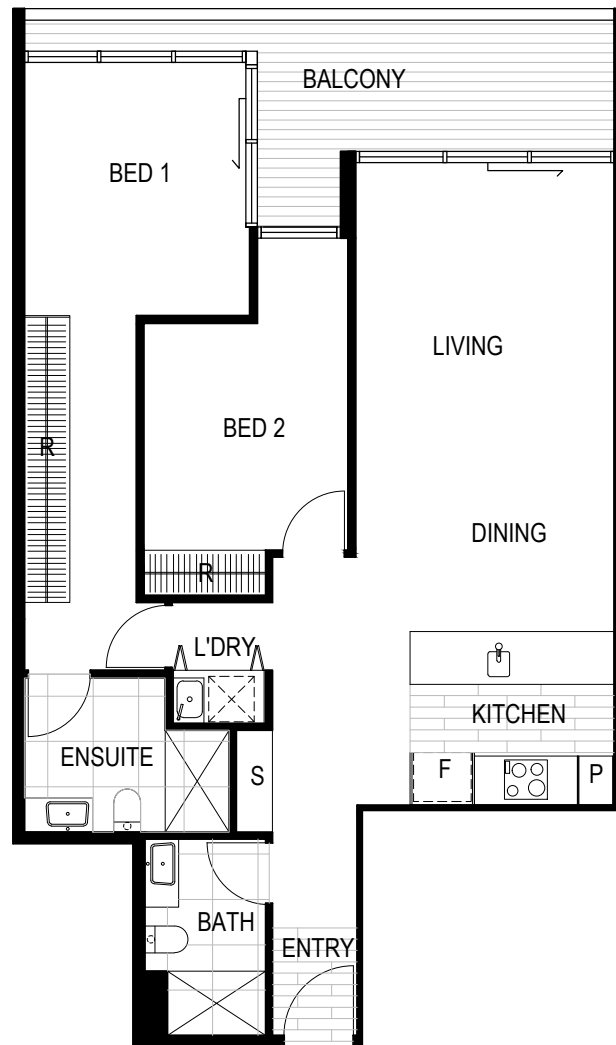
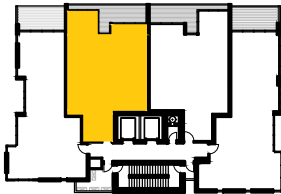
Version 1 / 29 August 2017

KOKO

BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 2A



2 BEDROOM

Internal : 83 m²

Balcony : 13 m²

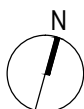
Total Area : 96 m²

Units : 4, 28, 52

Mirrored: 1, 25, 49

"Please refer to survey plans
attached to contract for sale"

0 1 5 m
SCALE 1:100 @ A4



Indicative only. Subject to Variations in accordance with the Contract Terms. See Identification Plan contained in the Disclosure Documents for area(s).

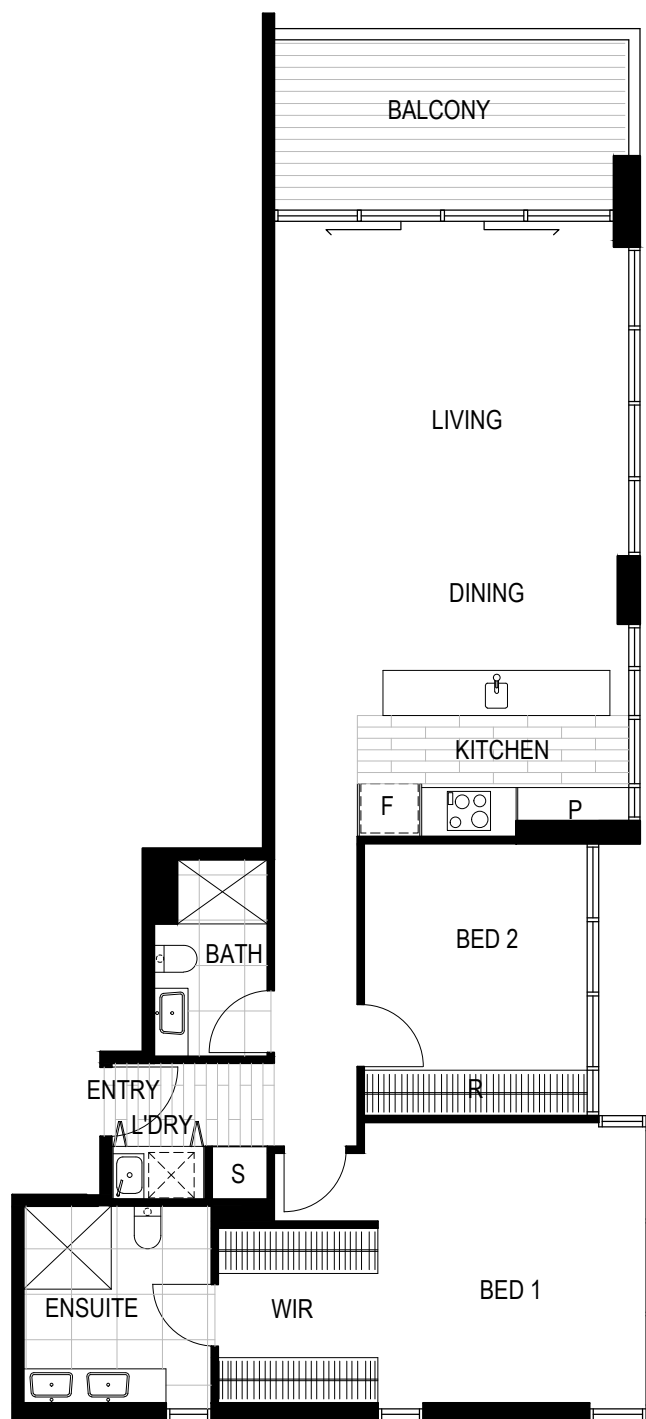
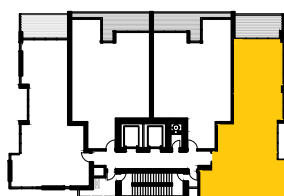
Date: 05/09/2017

KOKO

BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 2B



2 BEDROOM

Internal : 94 m²

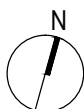
Balcony : 12 m²

Total Area : 106 m²

Units : 2, 6, 10, 14, 18, 22, 26, 30, 34,
38, 42, 46, 50, 54, 58, 62, 66,
70, 74, 78, 82

"Please refer to survey plans
attached to contract for sale"

0 1 5 m
SCALE 1:100 @ A4



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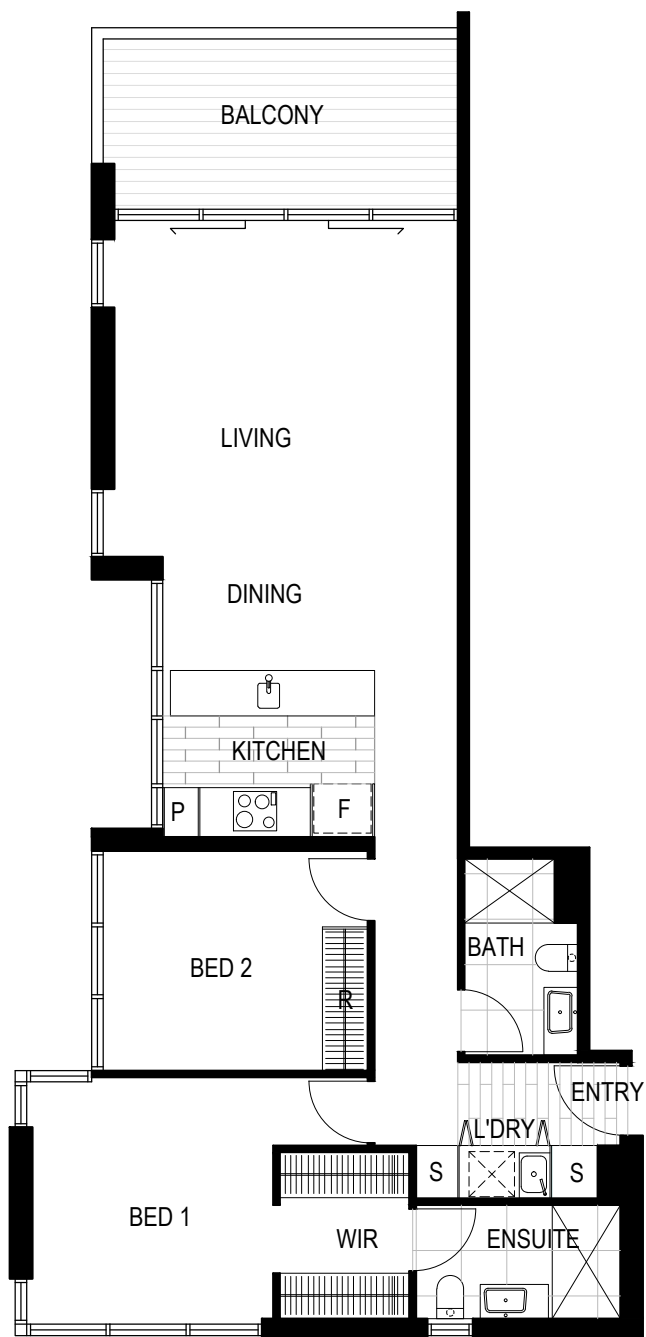
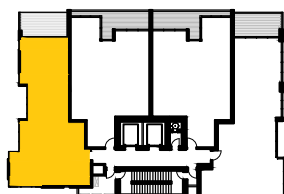
Date: 05/09/2017

KOKO

BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 2C



2 BEDROOM

Internal : 85 m²

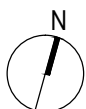
Balcony : 12 m²

Total Area : 97 m²

Units : 3, 7, 11, 15, 19, 23, 27, 31, 35, 39,
43, 47, 51, 55, 59, 63, 67, 71, 75,
79, 83, 86, 89, 92, 95, 98

"Please refer to survey plans
attached to contract for sale"

0 1 5 m
SCALE 1:100 @ A4



Indicative only. Subject to Variations in accordance with the Contract Terms. See Identification Plan contained in the Disclosure Documents for area(s).

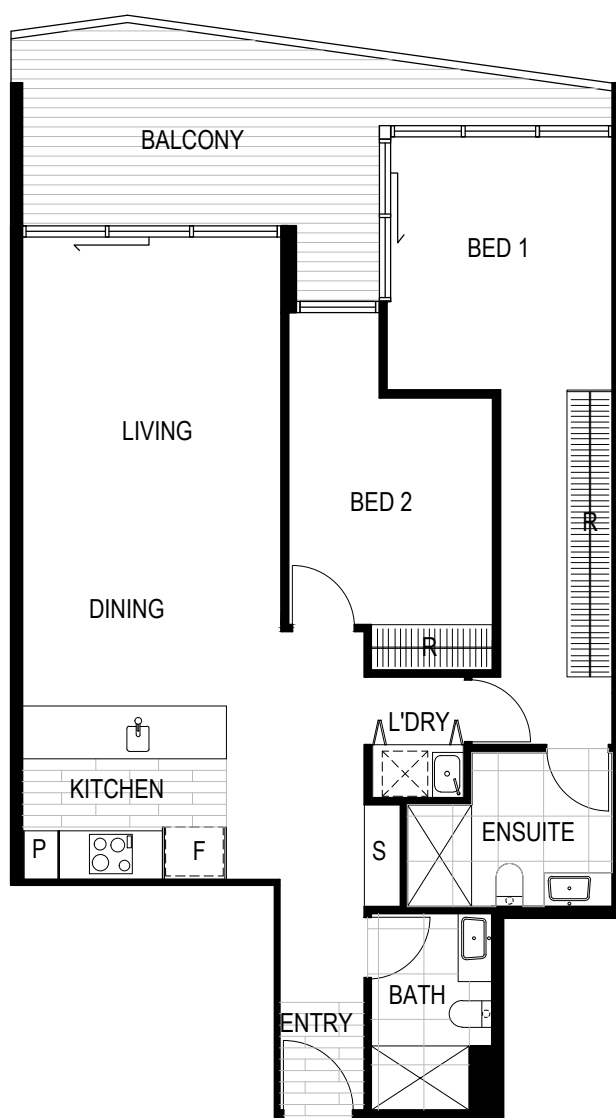
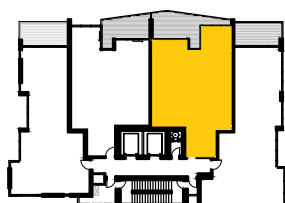
Date: 05/09/2017

KOKO

BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 2D



2 BEDROOM

Internal : 83 m²

Balcony : 17 m²

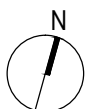
Total Area : 100 m²

Units : 5, 9, 13, 17, 21, 53, 57,
61, 65, 69, 73, 77, 81

Mirrored: 32, 36, 40, 44, 48

"Please refer to survey plans
attached to contract for sale"

0 1 5 m
SCALE 1:100 @ A4



Indicative only. Subject to Variations in accordance with the Contract Terms. See Identification Plan contained in the Disclosure Documents for area(s).

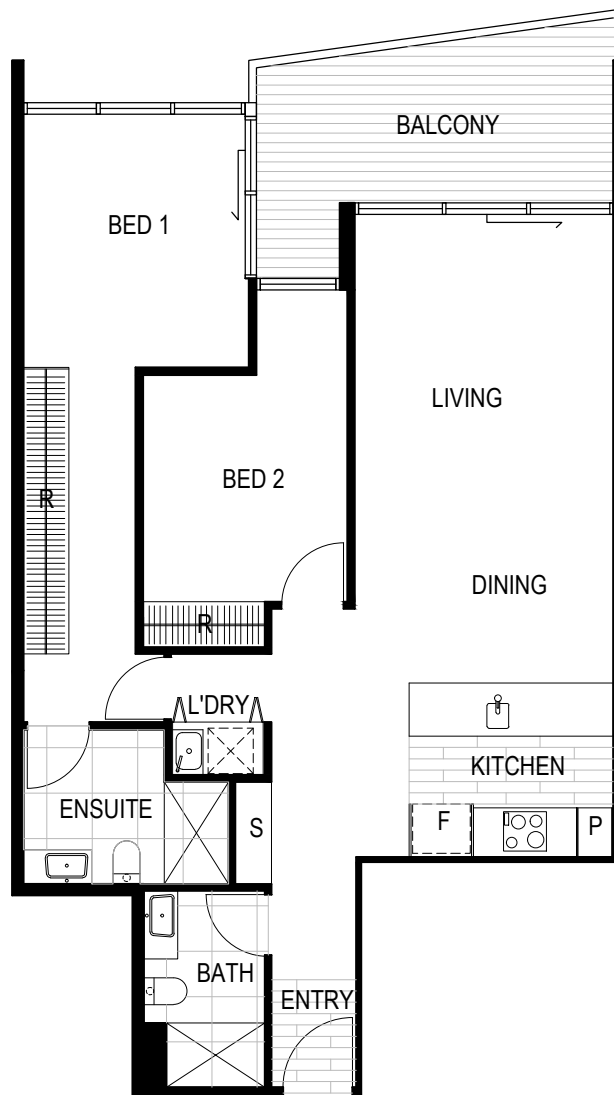
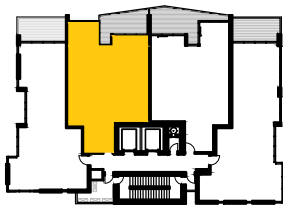
Date: 05/09/2017

KOKO

BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 2E



2 BEDROOM

Internal : 83 m²

Balcony : 12 m²

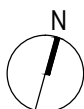
Total Area : 95 m²

Units : 8, 12, 16, 20, 24, 56, 60, 64, 68,
72, 76, 80, 84

Mirrored: 29, 33, 37, 41, 45

"Please refer to survey plans
attached to contract for sale"

0 1 5 m
SCALE 1:100 @ A4

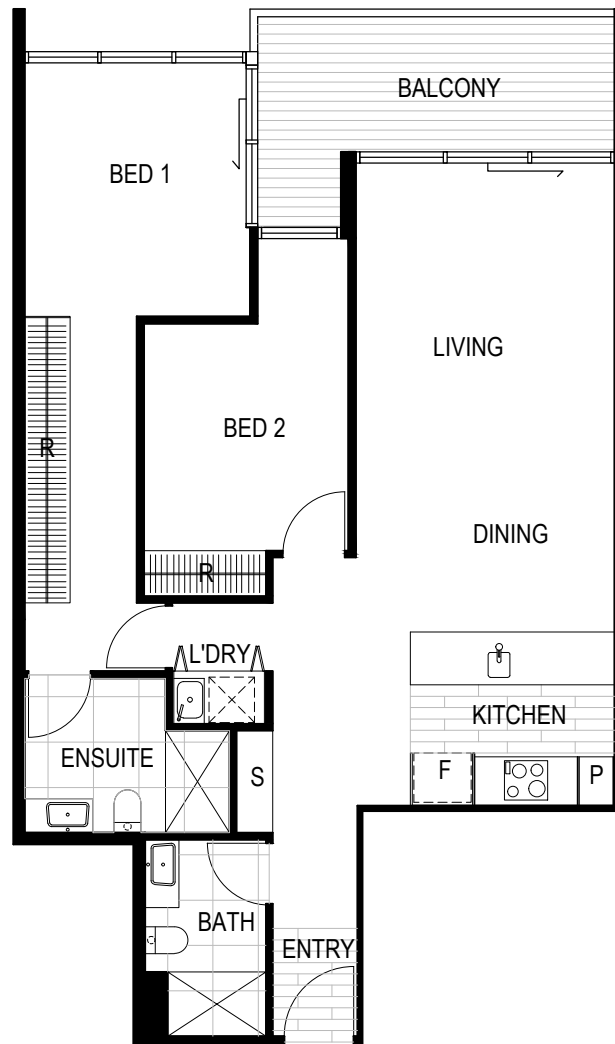
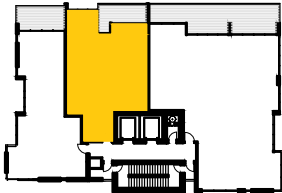


Indicative only. Subject to Variations in accordance with the Contract Terms. See Identification Plan contained in the Disclosure Documents for area(s).

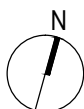
Date: 05/09/2017

BROAD BEACH

APARTMENT TYPE : 2F



Units : 87, 90, 93, 96, 99



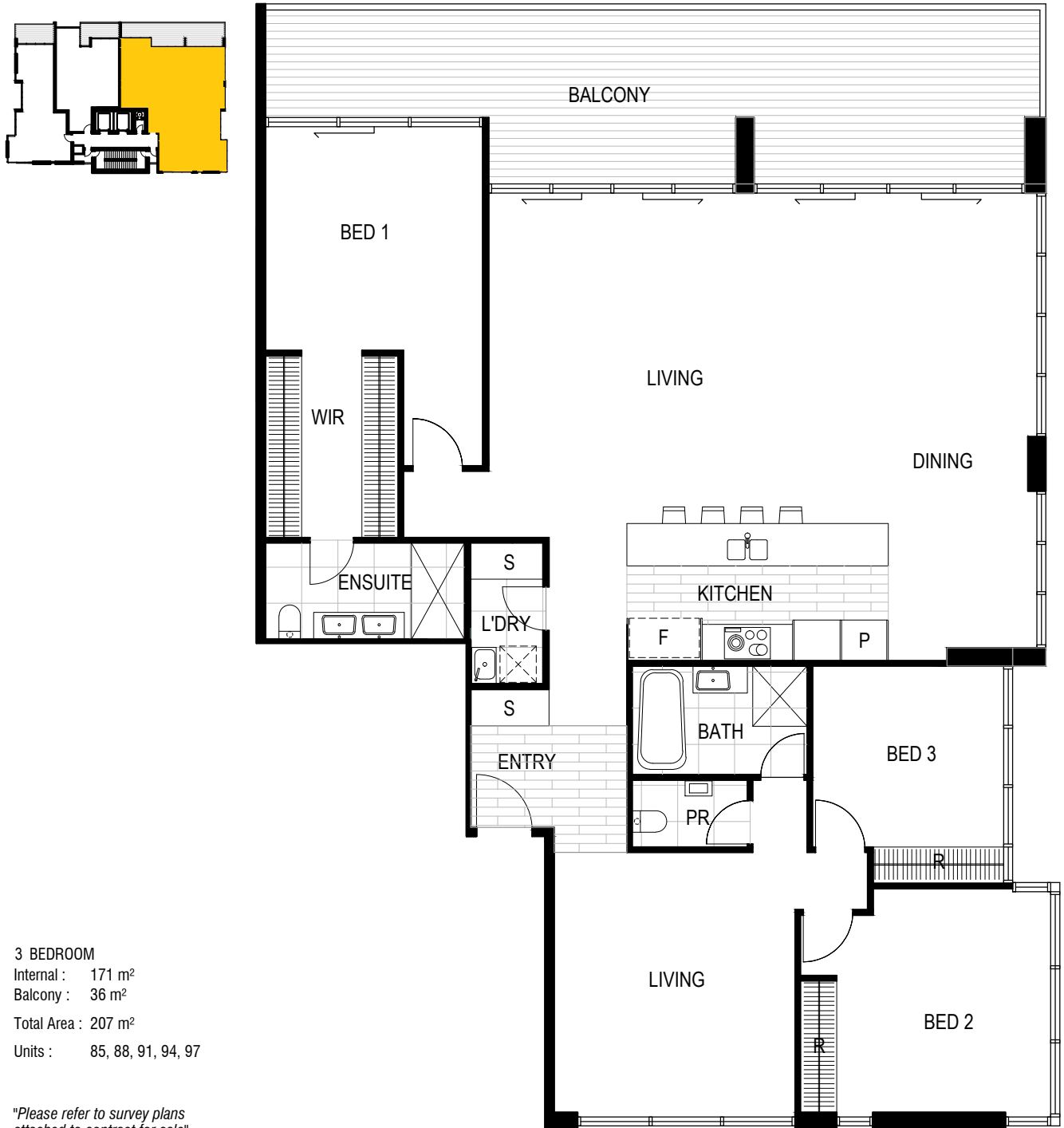
Date: 05/09/2017

KOKO

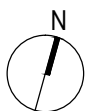
BROADBEACH

12-14 ELIZABETH AVENUE BROADBEACH QLD

APARTMENT TYPE : 3A



0 1 5 m
SCALE 1:100 @ A4



Indicative only. Subject to Variations in accordance with the Contract Terms. See Identification Plan contained in the Disclosure Documents for area(s).

Date: 05/09/2017

SPECIAL CONDITIONS
(Insert any Special Conditions here)

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 Building, Scheme or the Property (or any part or proposed part of them) including any services to be provided to them.

ASIC means the Australian Securities and Investments Commission.

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

Bank 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 draft copies of which are contained in the Disclosure Documents or which are otherwise referred to in the Disclosure Documents.

Builder means the builder of the Building.

Building means the building to be built within or on the Parcel, incorporating the Lot. The building is proposed to include a residential component and a ground floor retail component.

Building Management Statement means the building management statement or statements the benefit and burden of which are to be registered by Settlement against the Common Property and the Title with the Queensland Land Registry in respect of the management of the different components of the Building, supply of services, rights of access, rights of support and shelter, insurance arrangements and such other matters as are determined by the Seller in its discretion.

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 Scheme as amended from time to time.

Chattels means the chattels listed in the Specifications intended, at the Contract Date, for inclusion in the Lot.

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.

Colour Scheme means the colour scheme for the internal parts of the Lot as selected in the Reference Schedule or, if not selected, as determined in accordance with the Contract.

Committee means the committee of the Body Corporate.

Common Property means the common property of the Scheme (and includes, where the context requires, areas of Common Property which have been allocated pursuant to exclusive use by-laws for exclusive use of occupiers of lots in the Scheme).

Community Management Statement means the community management statement recorded in order to establish the Scheme.

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:

MPG ELSTON PTY LIMITED ACN 606 476 868 sale of unit [No.] **Koko Broadbeach** 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, charge, expense, outgoing, payment, liability or other expenditure of any nature including legal fees.

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

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

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

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

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

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

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

Exclusive Use Allocation Plan means the plan(s) (if any) attached to the Proposed CMS used to identify the possible location of areas of Common Property or Body Corporate assets to be allocated as EU Areas such as parking spaces (if any) and storage areas (if any).

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)*.

Floor Layout Plan means the plan included in this Contract (or contained in the Disclosure Documents) which shows the intended internal layout of the Lot (subject to Variations in accordance with the Contract).

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

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

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

Guarantee means the 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.

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

Latest Date means 30 June 2019.

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 in the Scheme as specified in the Community Management Statement.

MELA Agreement means an agreement for the caretaking of the Scheme and authorisation to carry out a letting agent's business within the Scheme between the Body Corporate and a manager.

Name means the intended name of the Scheme being **Koko Broadbeach**.

Non Compliant Guarantee means a:

- (e) Deposit Bond; or
- (f) 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).

Object means to object generally and includes to:

- (a) object to a change, variation, substitution, reduction or omission;
- (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; or
- (j) seek an injunction.

Occupation Authority has the meaning given in the Regulation Module.

Outgoings means:

- (a) rates, charges or levies on the Parcel, 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) Body Corporate and building insurances paid by the Seller including under the Building Management Statement.

Parcel means the land described as the Parcel in the Disclosure Documents.

Parties means the Seller and Buyer.

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

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

PLA 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.

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

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

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

PPSR means the register kept pursuant to the PPSA.

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 Scheme or the Building.

Proposed CMS means the proposed community management statement for the Scheme 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 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 Scheme.

Scheme means the **Koko Broadbeach** community titles scheme.

Scheme Land means the land (or that part of the Parcel) as described in the Disclosure Documents to be subdivided to create the Scheme.

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 titled "Settlement Date".

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

Settlement Statement means a statement which outlines or lists:

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

Shared Facilities means those parts of the Building (if any) which under the Building Management Statement or through some other arrangement are for the shared use and enjoyment of more than one owner in the Building and their tenants, guests and invitees, if applicable.

Sold Property means the Lot and Chattels.

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

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

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

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 5 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.

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 changes, variations, reductions, omissions, substitutions or additions to (as the context requires) the Scheme, the Building, the Shared Facilities, the Common Property, the Body Corporate assets or the Property including changes, variations, 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 included in the Scheme;
- (g) number of levels (including basement levels) within the Building;
- (h) facilities;
- (i) access arrangements;
- (j) landscaping;
- (k) composition;
- (l) density;
- (m) mix of or rights in relation to uses;
- (n) design;
- (o) façades;
- (p) balustrade and balcony finishes;
- (q) elevations;
- (r) ceiling heights;
- (s) location;
- (t) layout;
- (u) size;
- (v) dimensions;
- (w) area;
- (x) finishes;

- (y) Chattels;
- (z) colours;
- (aa) optional upgrades;
- (bb) components which comprise the Building or the Scheme;
- (cc) community facilities within the Building or the Scheme;
- (dd) descriptions or identification numbers of lots, units, levels, plans, exclusive use areas or assets; and
- (ee) addresses – street names and numbers.

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) the Seller obtaining all necessary Authority approvals for the Scheme;
- (b) construction of the Property being substantially complete;
- (c) recording of the Community Management Statement with the Queensland Land Registry;
- (d) registration of the Plan; and
- (e) issue of a certificate of classification (or equivalent) under the *Building Act (Qld)* (or equivalent) for that part or parts of the Building within which the Property is situated.

8. Unreasonable Conditions

8.1 This clause applies if an Authority:

- (a) refuses to grant or revokes a necessary permit or approval for the development of the Scheme;
- (b) grants an approval or permit for the development of the Scheme 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 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, 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 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 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 Building 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 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 Building or the Scheme commercially or financially undesirable or unviable or unacceptably risky for the Seller.
9. **Sunset Date**
- 9.1 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 sub-clause 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 At any time up to and including the Latest Date, the Seller may, by Notice to the Buyer, terminate this Contract if, acting in good faith, the Seller reasonably believes that the carrying out of the development of the Building or Scheme will not proceed or, acting in good faith, the Seller reasonably believes 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 Scheme. 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 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.

10.2 **On termination under this clause:**

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

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

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

D COLOUR SCHEME

11. Election of Colour Scheme

11.1 On signing the Contract, the Buyer must complete the Reference Schedule by electing a Colour Scheme.

11.2 The Seller will, subject to its right to make Variations, cause the Lot to be constructed with the Colour Scheme selected by the Buyer under this clause.

11.3 If the Buyer fails to make an election of the Colour Scheme as provided for in this clause, the Seller has no obligation to make enquiries of the Buyer as to the Buyer's preferred Colour Scheme and the Seller may cause the Lot to be constructed with the Colour Scheme that the Seller determines in its discretion. If this happens, the Buyer must not Object.

E CONSTRUCTION STANDARDS & ACTIVITIES

12. Construction Standards

The Seller will, subject to its rights in regard to Variations under this Contract, cause the Building, including the Lot, to be built substantially in accordance with the Identification Plan, the Floor Layout Plan and the Specifications, in a good and workmanlike manner.

13.	Construction Activities	F	<u>USES</u>
13.1	The Buyer acknowledges that construction of certain components of the Building may not be totally complete at Settlement and may be completed after Settlement.	16.	Uses
13.2	The Buyer will not Object (directly or through participation as a member of the Body Corporate) to: <ul style="list-style-type: none"> (a) any building of improvements or any other things done on the Parcel or within the Building 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 Building 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 Building; or (d) the Seller not making available for use by occupants in the Scheme 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 Building or construction activities generally, including if these things occur after Settlement and for an extended period after Settlement.	16.1	The Buyer acknowledges and agrees that: <ul style="list-style-type: none"> (a) the Building, as at the time the Buyer signs this Contract, is proposed to include a mix of retail, residential and possibly commercial uses; (b) at the time the Buyer signs this Contract, the Seller may not know what the mix will ultimately be because it depends on uncertain factors such as market demand, the economy generally, availability of suitable buyers and tenants, requirements imposed by Authorities and other factors; (c) the range of uses in the Building may include restaurants and other retail outlets which may operate or undertake delivery of produce and stock outside normal business hours; (d) the Building may be used for any purpose permitted by any Authority from time to time or otherwise determined by the Seller; and (e) 24 hour public access may be permitted over certain components of the Building (including Shared Facilities) such as roadways, driveways, parking areas and thoroughfare areas.
13.3	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 Parcel or within the Building, including directions related to traffic flow, both vehicle and pedestrian.	16.2	The Buyer acknowledges and agrees that it: <ul style="list-style-type: none"> (a) buys the Property with full knowledge of the proposed mix of uses, potential uses, restrictions, arrangements and other matters referred to in this clause, the Disclosure Documents and Promotional Materials; and (b) must not in any way Object to those things or the interruption of the Buyer's quiet use and enjoyment of the Property by members of the public, noise, nuisance or other inconvenience which might arise from them.
14.	Buyer's Consent – Further Development	16.3	The Buyer must, at the request of an interested party as nominated by the Seller (Requesting Party) provide all reasonable assistance and do all things reasonably necessary, at the cost of the Requesting Party, to enable the Requesting Party to obtain and maintain all licences and approvals required by the Requesting Party to operate a business (such as a liquor licence) within and from the Building. This includes: <ul style="list-style-type: none"> (a) signing any consent documents; (b) signing or completing any other request, application or similar documentation; (c) providing any authority to use or occupy shared areas or Shared Facilities; and (d) not objecting to any application, proposal, licence or conduct.
14.1	The Buyer consents to any application for any approval made to any Authority for the further carrying out of the development of the Building or improvements within or on the Building and agrees, if directed by the Seller: <ul style="list-style-type: none"> (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. 	16.4	The Seller does not make any promise or representation to the Buyer or make any prediction as to the type of operators that will operate from the retail or possibly commercial components of the Building, the hours during which those operators will operate or when the operators will commence trading from those
14.2	The Buyer will not in any way Object to any application for any approval made with any Authority for the further carrying out of 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.		
15.	Common Property Finishes		
	All Common Property finishes and landscaping will be determined by the Seller in its discretion.		

components. The Seller is entitled, in its discretion, to decide these matters. The Buyer will not Object in relation to any of these things.

G VARIATIONS

17. Off the Plan Sales

17.1 The Buyer acknowledges and agrees that:

- (a) the Property is being sold "off the plan";
- (b) the intention of the Seller to carry out the entire Building is not fixed and unequivocal and the Seller may carry out only some parts of the Building and not others;
- (c) the Seller may not have applied for, obtained or finalised all necessary approvals for the Scheme, the Building or the Property;
- (d) the Seller may not have finalised the design of all aspects of the Scheme, the Building and the Property;
- (e) further detailed design may need to be undertaken by the Seller prior to completion of construction;
- (f) the Seller may not own or have control over all of the Parcel;
- (g) the Seller has made disclosure to the Buyer about the Scheme, the Building and the Property in the Disclosure Documents and said certain things about them in the Promotional Materials regarding the Seller's intentions as at or about the Contract Date;
- (h) the statements made in the Disclosure Documents and the Promotional Materials are correct as at the date of this Contract but may cease to be so in the future as circumstances change;
- (i) the Scheme, the Building and the Property may be subject to Variations for various reasons including requirements of Authorities, financial feasibilities, construction costs, market conditions, rates of sale of lots, etc (which may occur after this Contract is entered into or after Settlement);
- (j) components of the Scheme and the Building (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 Scheme);
- (k) the Seller may make Variations to the Scheme, the Building and the Property as set out in this Contract;
- (l) it is reasonable that the Seller has flexibility and may make Variations as contemplated by this Contract;
- (m) any information about the carrying out of the Building (including that contained in the Disclosure Documents and Promotional

Materials) is not a prediction or a promise or representation to the Buyer that the Building will be carried out in accordance with that information but are statements of intention only; and

- (n) the Buyer has not relied on the information about the carrying out of the Building in deciding to enter into this Contract and accepts the risk that any part of the Building may not be carried out or may be carried out subject to Variations in accordance with this Contract.

18. Variations to the Building, the Scheme & the Common Property

The Seller is entitled to make Variations to the Building, the Scheme and the Common Property as they are depicted in the Disclosure Document and Promotional Materials as determined by the Seller in its discretion. The Buyer will not Object because of any such Variations providing they do not:

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

19. Variations to the Property

19.1 The Buyer acknowledges and agrees that:

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

19.2 The Buyer:

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

19.3 The Seller is entitled to make Variations to the Property (which includes the Lot). The Buyer will not Object to any Variation to the Property if the Variation is a Permitted Variation.

- 19.4 Each Variation of the Property is to be considered separately in determining if the Variation is a Permitted Variation. The Parties agree that regard will not be had to the aggregate effect of more than one Variation, in making a determination as to whether a Variation is or is not a Permitted Variation.
- 19.5 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%.
- 20. Variations to Chattels & Finishes**
- 20.1 The Seller may, in its discretion, substitute or vary Chattels, materials, fixtures, fittings, finishes and colours described or shown in the Floor Layout Plan or Specifications or shown in any Promotional Materials (including any items included in any furniture package sold under or collateral to this Contract) with other colours and similar chattels, materials, fixtures, fittings or finishes provided that:
- (a) the substituted items are of approximately the same or comparable quality or superior quality; or
 - (b) if the substituted items are of less than approximate the same or comparable quality, the Buyer is not materially prejudiced as a result of the substitution.
- 20.2 The Seller may, in its discretion, omit any Chattels, materials, fixtures or fittings described or shown in the Floor Layout Plan or Specifications or shown in any display apartment, display board or shown in any Promotional Materials (including any items included in any furniture package sold under or collateral to this Contract) providing that the omission does not materially prejudice the Buyer.
- 20.3 If the Buyer is materially prejudiced as a result of a substitution referred to in sub-clause 1(b) or an omission referred to in sub-clause 2, the Buyer cannot Object except that the Buyer may claim compensation from the Seller in accordance with the clause of this Contract entitled "*Rights of Buyer if Buyer entitled to Object to Variation*".
- 20.4 The Buyer agrees that, notwithstanding any description of the balustrade or balcony finish in respect of the Lot specified in the Specifications or shown in the Disclosure Documents, Promotional Materials or elsewhere, the Buyer is not entitled to Object if the Seller changes or varies the glazing, materials, finish or designs of or that relate to the balustrades, balconies or courtyards in respect of the Lot or any screens to or on the balustrades, balconies or courtyards of the Lot.
- 21. Variations to EU Areas**
- 21.1 This clause applies in respect of all EU Areas (if any) intended to comprise part of the Property.
- 21.2 The Buyer acknowledges and agrees that:
- (a) notwithstanding any location, dimensions or description of EU Areas which may be set out in this Contract, the Disclosure Documents or the Promotional Materials, such location, dimensions or description are not essential terms of this Contract;
- (b) prior to entry into this Contract, the Buyer was given the opportunity to negotiate the terms of this Contract and to specify any aspect of the location, dimensions or description of the EU Areas which are material or essential to the Buyer;
 - (c) the Seller may, in its discretion, make Variations to any EU Areas provided:
 - (i) in the case of a parking area, that the Buyer receives the benefit of a parking area in which an average sedan motor vehicle can be parked (unless the EU Area is a "*small car space*" or similar in which case the obligation of the Seller is to ensure the Buyer receives an alternate "*small car space*" or a parking area in which an average sedan motor vehicle can be parked); or
 - (ii) in the case of a storage area, that the Buyer receives the benefit of a storage area or areas which is or are similar in total size to the area previously proposed to have been allocated for the exclusive use of the Lot; and
 - (iii) in all other cases, that the Variation is a Permitted Variation;
 - (d) the Seller may, in its discretion, determine and change the access arrangements as between the Lot as built and any relevant EU Areas, including by effecting a shuttle lift arrangement between the basement EU Areas and the entry foyer of the Building with a second lift arrangement between the foyer and the floor of the Building on which the Lot is situated;
 - (e) the allocation of any parking, storage, courtyard and other areas to the Lot may be by way of a grant of Common Property or Body Corporate assets under an exclusive use by-law and not as part of the Title and vice versa; and
 - (f) the Lot may be allocated the benefit of a "*small car park*" if the parking area which is shown as to be allocated to the Lot on the Exclusive Use Allocation Plan or elsewhere is shown as being a "*small car park*" or similar.
- 21.3 The Buyer must not Object to the Seller exercising its right to make Variations permitted under this clause.
- 21.4 The Buyer acknowledges and agrees that the design (including the structural design) of the podium structure (including the basement car parks) which forms part of the Building and which may include parking areas, storage areas and bicycle parks for the Scheme may not be finalised as at the Contract Date. The design or structural design may necessitate the installation, movement or size of columns, walls and other structural elements, mechanical ventilation, air conditioning units and fire and other service pipes and sprinklers, conduits and the like next to or partially within a parking area or bicycle park or within a storage area, which may reduce

the size of the area, the height above the space or interfere with the convenient use of the parking area, bicycle park or storage area. The Buyer must not Object to any such installation, movement or size of the relevant structural element or other equipment or item.

22. Rights of Buyer if Buyer entitled to Object to Variation

22.1 This clause 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.

22.2 If this clause applies:

- (a) the Buyer must not Object other than as set out in this clause; and
- (b) the Buyer may give Notice to the Seller claiming compensation as a result of the Variation (**Compensation Notice**), such 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. 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.

22.3 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**).

22.4 If the Seller gives a Valuer Notice:

- (a) the Parties must use their best endeavours to agree a valuer to determine the compensation within 5 Business Days and, failing agreement, the valuer will be nominated by the President for the time being of the Queensland Law Society Incorporated (or their nominee) following request by either Party;

(b) the valuer will be instructed to determine the amount of the compensation:

- (i) based on the reduction in value (if any) of the Property occurring as a result of the Variation; and
- (ii) within a reasonable time and, in any event, within 10 Business Days;

(c) the determination of the valuer as to the quantum of compensation is final and binding on the Parties and is the only compensation payable by the Seller; and

(d) the costs of the valuer must be paid equally by the Parties.

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

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

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

H DEFECTS

23. Lot Inspection & Defect Fixing

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

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

23.3 During the Pre-settlement Inspection, the Parties (or their representatives) must inspect the Lot for any Defects and must complete and sign 2 copies of a certificate in a form specified by the Seller (**Inspection Certificate**) that, as applicable:

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

23.4 If an issue or matter described in the Inspection Certificate is noted as "*to be referred to the Builder*", then the Seller must, within 10 Business Days, refer the issue or matter to the Builder for determination. If the

- Builder accepts that the issue or matter is a Defect, then the issue or matter is a Defect for the purposes of the Inspection Certificate and is to be dealt with in accordance with this clause. If the Builder does not agree that the issue or matter is a Defect, then the issue or matter is taken to be listed as "*disputed*" for the purposes of the Inspection Certificate and is to be referred to the Expert for determination within 10 Business Days in accordance with this clause.
- 23.5 If an issue or matter described in the Inspection Certificate is listed as "*disputed*", then the Seller must, within 10 Business Days, refer the issue or matter to the Expert for determination. When referring the issue or matter to the Expert for determination, the Seller must ask the Expert to act as an impartial expert in making the determination. The Expert:
- (a) in making a determination, acts as an expert;
 - (b) must be asked by the Seller to notify the Parties in writing of its determination of whether or not the issue or matter referred to the Expert is a Defect; and
 - (c) must be asked by the Seller to determine the issue or matter within a reasonable time of being referred the issue or matter for determination.
- The determination of the Expert is final and binding on the Parties. The Parties must pay the costs of the Expert in equal shares.
- 23.6 The Seller must cause to be completed or fixed within a reasonable time after:
- (a) Settlement, all Defects described in the Inspection Certificate, except any issue or matter that is listed as *disputed*; and
 - (b) the determination by the Expert that an issue or matter is a Defect, the issue or matter which has been determined by the Expert to be a Defect.
- 23.7 If the Inspection Certificate has identified a Defect that requires completion or fixing or has identified a matter that is to be referred to the Builder or the Expert, then the Buyer must rely on its rights under this clause and has no right to Object pending completion or fixing of the identified Defect.
- 23.8 Provided the Buyer has attended the Pre-settlement Inspection and signed the Inspection Certificate, the Seller will cause to be fixed any further Defect that is notified by the Buyer to the Seller within 3 months after Settlement. If the Seller disputes whether an issue or matter notified as a Defect is an issue or matter which requires completion or fixing, the Seller must refer the issue or matter to the Expert for independent determination and the provisions of sub-clause 5 will apply in relation to that determination.
- 23.9 If the Buyer fails to attend or carry out the Pre-settlement Inspection or fails to sign the Inspection Certificate at the Pre-settlement Inspection, then the Buyer must not Object to any particular of or omission in the construction of the Lot (either before or after Settlement).
- 23.10 The Seller is not required to inspect or cause to be completed or fixed any Defect unless the Buyer, at the Seller's request, provides to the Seller and any contractor nominated by the Seller suitable access to the Lot in order to enable inspection, completion and fixing works to be performed.
- 23.11 The Seller is not required to fix scratches, chips, dents or marks on any surface, covering or item unless they are identified in the Inspection Certificate.
- 23.12 The Buyer will not Object because of any omissions or defects to other lots in the Building or elsewhere in the Scheme.
- 23.13 For the avoidance of doubt, the Buyer will not Object if the Buyer is not permitted to inspect any EU Areas which form part of the Property during the Pre-settlement Inspection or otherwise before Settlement.
- 23.14 The Buyer must comply with all of the reasonable requirements and directions of the Seller (and its builder) about site safety and access during the Pre-settlement Inspection and any other inspections of the Property or the Scheme.
- 23.15 The Buyer's remedy for any failure on the part of the Seller to perform its obligations under this clause is limited to damages in the amount of the reasonable costs of rectification.
- 24. Buyer's Acknowledgment about Finishes, Materials etc**
- 24.1 The Buyer acknowledges that:
- (a) garage doors, concrete, driveways, verandas, balconies, terraces, slabs, tiled areas and other exposed surfaces, cornices, architraves and similar areas may develop imperfections (such as cracks) due to temperature changes and normal settlement;
 - (b) some of the materials used in the construction of the Lot and the Building, particularly in finishes and fittings, may comprise natural products, such as stone, timber and the like and these materials may:
 - (i) exhibit variations and imperfections such as in shade, colour, texture, surface, finish, markings or the like and may contain natural fissures, occlusions, lines, indentations or the like;
 - (ii) expand, contract or distort over time as a result of exposure to heat, cold, changes in humidity, temperature or the like;
 - (iii) mark or stain if exposed to certain substances; or
 - (iv) be damaged or disfigured by impact or scratching or other mechanical means.
- 24.2 The Buyer agrees that the kinds of matters and imperfections described in this clause are not Defects and that the Seller does not have to fix these kinds of matters and imperfections. The Buyer will not Object in relation to any of the matters set out in this clause.

I DEALINGS WITH COMMON PROPERTY

25. **Seller's Right to Grant Leases & Licences**

25.1 The Seller may procure that the Body Corporate grant leases and licences over areas of Common Property and 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 Scheme;
- (b) materially affect the use of Common Property amenities or Body Corporate assets within the Scheme by the Buyer; or
- (c) have a direct material adverse effect on the use or value of the Property.

25.2 Notwithstanding sub-clause 1, the Seller may cause the Body Corporate to 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). If this happens, the Buyer must not Object.

25.3 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 sub-clause 1 or 2. The Buyer must not Object if this happens.

25.4 Subject to sub-clause 1, the Buyer will not Object to the Seller exercising its rights to procure that the Body Corporate grant leases and licences over areas of Common Property or Body Corporate assets.

25.5 Without limitation, and by way of example only, the Seller may procure that the 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.

25.6 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.

25.7 Without limiting any of the Seller's rights under this clause, the Seller discloses to the Buyer that the Seller may (but is not required to) procure that the Body Corporate grant a licence (or similar instrument) in favour of the Seller or a related entity over an area of rooftop Common Property pursuant to which the

licensee will be entitled to keep the licensee's branding signage for a period of up to 20 years for an annual licence fee of \$1.00. The Buyer must not Object if this happens.

26. **Seller to Retain Fees & Payments**

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

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

26.3 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 Seller causing the grant of exclusive use rights. Notwithstanding Settlement, if there is a breach or anticipatory breach by the Buyer of this clause, the Seller will be entitled to all reasonable Costs incurred and all losses suffered as a result of, or arising from, the breach.

J TITLE

27. **Title**

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

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

27.3 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 Community Management Statement;
- (b) the Building Management Statement;
- (c) any matter endorsed upon the Plan;
- (d) any rights or interests reserved in favour of the Crown;
- (e) any administrative advices or similar dealings;
- (f) any encumbrances in favour of any Authority or any service authority (whether registered, unregistered or statutory);
- (g) the conditions of any approval of any Authority;
- (h) the existence or passage through the Property of utilities or utility infrastructure or other

- systems or services and all statutory rights relating to services;
- (i) any notifications, easements, restrictions, encumbrances, covenants or other matters or dealings disclosed to the Buyer in the Disclosure Documents, this Contract or elsewhere;
 - (j) 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;
 - (k) any easements benefiting or burdening the Property, the Title, the Parcel, 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
 - (l) all notifications, easements, statutory covenants, administrative advices and restrictions in relation to the Title, the Parcel, the Scheme Land, the Common Property or the Property required in order to satisfy the requirements of any Authority.

27.4 The Buyer must not Object to the surrender, extinguishment or variation of any encumbrances or dealings.

28. 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.

29. Mistake

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

- (a) is not entitled to terminate this Contract;

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

30. Buyer must not Object

30.1 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) any of the matters and disclosures contained in this Contract, the Disclosure Documents or the Promotional Materials;
- (b) any error, mistake or omission contained in the Disclosure Documents or the Promotional Materials;
- (c) the Seller replacing or updating materials disclosed in the Disclosure Documents or the Promotional Materials;
- (d) residential lots within the Scheme being sold as affordable or low cost type housing whether pursuant to a condition of a development approval or otherwise;
- (e) the implementation of any environment sustainability initiatives in respect of the Building;
- (f) the Identification Plan not specifying the precise height of the Lot by reference to natural ground level or by reference to Australian Height Datum;
- (g) any alteration to the number of floors in the Building by inserting additional floors or omitting proposed floors and any consequential changes to the location or identification of the Lot in terms of elevation, level or height within the Building or the description of the Lot;
- (h) the Floor Layout Plan not showing the area or dimensions of the Lot including its internal layout (size of rooms, balcony areas, joinery and the like);
- (i) the area or dimensions of EU Areas which are parking spaces not being shown on the Exclusive Use Allocation Plan or on any other plan which depicts the area;
- (j) the height clearances of EU Areas which are parking spaces or storage areas;
- (k) settlement of lots within 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 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 Building or the owner of nearby land;
- (n) any alteration to the street number or address of the Lot or the Scheme or the name of or any intellectual property associated with the Scheme;
- (o) any alteration in the number or location of lots in the Scheme or the numbering, size, location or permitted use of lots in the Scheme;
- (p) any alteration to the Lot Entitlement of the Lot or any other lot from the Proposed Lot Entitlement;
- (q) any alteration in the aggregate Lot Entitlement of all lots in the Scheme;
- (r) any alteration to the materials which comprise the Statutory Disclosure Statements including any community management statement as a result of any changes to legislation;
- (s) the length of tandem parking spaces (if any) being less than the length of two normal parking spaces;
- (t) the ceiling heights within the Lot, even if those ceiling heights are different from those shown in any display apartment or those depicted or described elsewhere such as in Promotional Materials;
- (u) the Parcel being affected by flooding or other flow or inundation of water at any time including before or after formation of this Contract or Settlement;
- (v) a boundary of the Parcel or Scheme Land not being fenced, or any boundary, fence or wall not being upon or within the boundary;
- (w) the existence of an encroachment onto or from the Parcel or Scheme Land;
- (x) the existence or passage through the Lot, Parcel, Scheme Land or Common Property of utility infrastructure whether for the Lot, the Building, the Common Property or other adjoining building, property or lots;
- (y) the subdivision of the Parcel into the Scheme Land or the Scheme Land into the Scheme by any type and number of survey plans determined by the Seller;
- (z) the subdivision or amalgamation of any lots in the Scheme, other than the Lot;
- (aa) the transfer of any additional land into the Parcel or the Scheme whether as a lot or Common Property;
- (bb) the transfer, dedication or excision of any land out of the Parcel, the Scheme Land or the Scheme;
- (cc) an alteration to the Shared Facilities, the Common Property, Body Corporate assets or any other facilities or rights in relation to their use;
- (dd) facilities within the Building being made available for use at different times including after Settlement;
- (ee) an alteration in the access arrangements and facilities intended to benefit or burden the Scheme;
- (ff) the creation of community title schemes in addition to the Scheme;
- (gg) certificates of classification (or equivalent) being issued at different times for different parts of the Building or the Scheme;
- (hh) there being no pool safety certificate at Settlement if there is a pool;
- (ii) a change in the Regulation Module to apply to the Scheme;
- (jj) the disclosure or non-disclosure of proposed service location diagrams as part of the Proposed CMS;
- (kk) arrangements in relation to supply of utilities including if the Body Corporate enters into arrangements for the supply of utilities;
- (ll) utility infrastructure being owned by the supplier of the utility and not the Body Corporate (for example, cabling, meters, hot water, air conditioning and gas supply equipment, communications equipment and associated infrastructure);
- (mm) insurance for the Scheme being arranged as part of an insurance policy taken out under the Building Management Statement;
- (nn) the Seller causing the Body Corporate to have one or more general meetings while it is (or effectively is) the sole member of the Body Corporate and electing or confirming the appointment of the members of the Committee and attending to matters required by the BCCM Act;
- (oo) the Seller causing 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;
- (pp) the Seller causing 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;
- (qq) the Seller causing changes to be made to 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 the Proposed CMS;
- (rr) the Seller causing the Body Corporate to pass resolutions while the Seller is the sole member of the Body Corporate, 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 Building;

- (ss) the Seller causing 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 Body Corporate Agreements);
- (tt) the identity of any service contractor or letting agent under a Body Corporate Agreement not being known or not being disclosed to the Buyer as at the Contract Date;
- (uu) the manager under the MELA Agreement not residing within the Scheme or the Building;
- (vv) any delay in the entry by the Body Corporate into any of the Body Corporate Agreements or delay in their commencing including if the Seller causes interim arrangements to be effected until those Body Corporate Agreements commence such as for caretaking and letting authorisation;
- (ww) the grant of the use by an Occupation Authority or otherwise of areas of the Common Property to the parties who enter into the 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;
- (xx) the Lot or the Common Property being recorded on or in the Contaminated Land Register, Environmental Management Register or any similar register maintained by an Authority or being subject to a site management plan, remediation action plan or similar plan because the Parcel or the Scheme Land (or any part of it) is or was recorded on such a register or is or was subject to such a plan;
- (yy) the Parcel, the Scheme Land, the Common Property or the Lot being recorded on or in the Contaminated Land Register or the Environmental Management Register or any similar register or being subject to a site management plan, remediation action plan or similar because of something that occurs or contamination that is discovered during construction of the Building (or any part of it) or because of the installation of improvements within the Building (or any part of it), for example, fuel storage tanks for back up generators; and
- (zz) the existence of any electrical substation, sewerage system, transformer or telecommunications facility (including a tower or satellite dish) or similar thing within or on the Scheme or Building or on the Parcel or Scheme Land.

K BODY CORPORATE

31. By-Laws

- 31.1 Subject to sub-clause 2, at Settlement, the By-laws will be as set out in the Proposed CMS.

- 31.2 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 of the Scheme. The Buyer must not Object to any changes of the By-laws.

32. Parties Agreement – Exclusive Use Allocations

- 32.1 The Parties, for the purposes of Chapter 3 Part 5 Division 2 of the BCCM Act and any exclusive use By-law that authorises the exclusive use allocation of Common Property or a Body Corporate asset, agree:

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

- 32.2 The Buyer must not Object if, at Settlement, the Community Management Statement does not record the allocation of the Common Property or Body Corporate asset for the benefit of the occupiers of the Lot as contemplated by this Contract or the Disclosure Documents provided that the Body Corporate has been given notification of the authorised allocation from the Seller or the Seller's Solicitor.

33. 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.

34. Body Corporate Agreements

- 34.1 The Seller may cause the 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.

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

- 34.3 The Seller discloses and the Buyer acknowledges that the Seller may receive fees (or other benefits) for

causing the Body Corporate Agreements or any one or more of them to be entered into.

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

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

and that the powers to be exercised and functions required to be performed by the service contractor and letting agent under the MELA Agreement are appropriate for the Scheme and do not adversely affect the Body Corporate or its ability to carry out its functions.

34.5 The Buyer consents to the Seller causing the 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.

34.6 Sub-clauses 7, 8 and 9 below are subject to the Seller having complied with its obligations under the terms of the BCCM Act in relation to the Body Corporate Agreements.

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

- (a) causing 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 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 Body Corporate entering into the Body Corporate Agreements or any one or more of them.

34.8 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.

34.9 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.

34.10 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.

34.11 A reference to a service contractor providing services in respect of a particular facility or thing in 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.

34.12 The Buyer acknowledges that the Manager under the MELA Agreement 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.

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

35. Waste Services

35.1 The Seller discloses to the Buyer that the Body Corporate and each owner of a lot within the Scheme may be required to give an indemnity to Gold Coast 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.

35.2 The Buyer must give such an indemnity if directed to do so by the Seller in the form required by the Gold Coast City Council or other Authority and must not Object due to the giving of the indemnity or the liability of the Body Corporate (and the Buyer) under the indemnity.

L THE BUYER

36. Foreign Investment Review Board

36.1 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.

36.2 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 sub-clause 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 is an Essential Term.
- (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).
- 36.3 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:
- (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).
- 36.4 The Buyer consents to any information given by the Buyer under this sub-clause being included in any reports that must be given by the Seller as a condition of any approval given to the Seller under FATA.
- 36.5 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.
- 37. Personal Guarantee**
- 37.1 This clause is an Essential Term of the Contract and applies if the Buyer:
- (a) is a company; or
 - (b) is a company trustee of a trust.
- 37.2 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.
- 37.3 The Guarantee must be signed by the Guarantors before the Seller signs this Contract.
- 37.4 The Buyer, and the Guarantors by signing the Guarantee, acknowledge and agree that if the Seller transfers or assigns its interest in this Contract, the Seller also assigns or transfers the benefit of the Guarantors' obligations and indemnities under the Guarantee to the transferee or assignee.
- 38. Buyer a Trustee**
- 38.1 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.
- 38.2 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.

- 38.3 If the Buyer is described in the Reference Schedule as being a trustee of a trust, then the Buyer promises the Seller that:
- (a) the Buyer is the sole trustee of the trust;
 - (b) the Buyer enters into this Contract as part of the due administration of the relevant trust and that this Contract is for the benefit of the relevant trust and its beneficiaries;
 - (c) the Buyer is empowered by the trust instrument for the relevant trust to enter into and perform this Contract in its capacity as trustee of the trust (there being no restriction on or condition of it doing so);
 - (d) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust instrument for the relevant trust for it to enter into and perform this Contract;
 - (e) no property of the relevant trust has been re-settled or set aside to any other trust;
 - (f) the relevant trust has not been terminated and no event for the vesting of the assets of the trust has occurred;
 - (g) the trust instrument for the relevant trust complies with all applicable laws;
 - (h) the Buyer has complied with its obligations and duties under the trust instrument for the relevant trust and at law;
 - (i) the Buyer has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability undertaken under to this Contract; and
 - (j) the Buyer will, upon request, deliver to the Seller copies of all documents establishing or amending the trust or making appointments under the trust.
- 38.4 Each of the Buyer's promises in sub-clause 3 are repeated, with respect to the facts and circumstances, at the time, at Settlement.
- 39. Insolvency or Death of Buyer**
- 39.1 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.
- 39.2 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.
- 39.3 For the purposes of this clause "*Buyer*" includes any of the parties that comprise the Buyer.
- M DEPOSIT**
- 40. Deposit**
- 40.1 The Parties nominate the Deposit Holder as trustee for the purposes of the BCCM Act.
- 40.2 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.
- 40.3 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.
- 40.4 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.
- 41. Deposit Holder Authority, Release and Indemnity**
- 41.1 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.
- 41.2 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.

- 41.3 The Parties acknowledge and agree that:
- the Deposit Holder is a third party intended to take the benefit of this clause within the meaning of section 55 of the PLA;
 - that the Deposit Holder's acceptance of the Deposit is taken to be acceptance of the benefit of this clause; and
 - 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.
42. **Investment of Deposit**
- 42.1 The Parties authorise and direct the Deposit Holder to invest the Deposit. The Deposit Holder may invest the Deposit with an Australian bank selected by the Deposit Holder on terms and at an interest rate determined by the Deposit Holder in its discretion.
- 42.2 The Deposit Holder is not required to invest the Deposit:
- unless the Buyer is a Foreign Interest, until the Buyer gives the Deposit Holder its tax file number;
 - unless the Deposit paid in cash equals at least 10% of the Price;
 - until the whole of the Deposit is paid;
 - if the Settlement Date is anticipated to be within 90 days after the Contract Date; or
 - if the Buyer has notified the Seller that it intends to substitute a cash payment of the Deposit with a bank guarantee in accordance with this Contract.
- 42.3 The Deposit Holder is not liable to either Party for any loss occasioned by any:
- delay or failure in investing the Deposit; or
 - break costs or other fees being levied on or deducted from the Interest.
- 42.4 The Parties acknowledge that as a condition of funding for 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.
- 42.5 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 Australian bank or other financial institution selected by the Deposit Holder on terms and at an interest rate determined by the Deposit Holder in its discretion.
- 42.6 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.
- 42.7 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.
- 42.8 The Deposit Holder is authorised to terminate the investment of the Deposit at a reasonable time before Settlement so that the Deposit and Interest will be available at Settlement.
- 42.9 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.
- 42.10 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.
- 42.11 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.
- 42.12 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 and the payment is conditional upon Settlement taking place.
43. **Entitlement to Deposit & Interest**
- 43.1 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 |
- 43.2 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.

43.3 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.

43.4 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.

44. Bank Guarantee

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

44.2 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.

45. Non Compliant Guarantee

45.1 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, failing which, in addition to the exercise of any other rights, the Seller may direct the Seller's Solicitor to call on the Non Compliant Guarantee (if the terms of the Non Compliant Guarantee permit a call to be made without termination).

46. Calling on Deposit Guarantee

46.1 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.

46.2 If the Deposit Holder 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.

46.3 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.

46.4 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.

N PRICE

47. 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.

48. GST

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

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

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

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

48.5 This clause 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.

49. Adjustments

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

49.2 Outgoings are apportioned on the basis that:

- (a) the Seller is liable for Outgoings up to but not including the day of registration of the Plan; and

(b) the Buyer is liable for Outgoings from and including the day of registration of the Plan.

49.3 Notwithstanding sub-clause 2, If it is the practice of the relevant assessing authority to separately assess an Outgoing for the Lot from the date of registration of the plan onwards, there will be no apportionment of adjustment to the Price for it and the Buyer is responsible for the Outgoing from the date of issue.

49.4 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.

49.5 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).

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

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

49.7 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.

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

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

Where:

Amount = amount of land tax payable on the Parcel 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.

GFAS = the total gross floor area of the lots within the Scheme; and

GFAD = the GFAS plus the total gross floor area of commercial/retail lots within the Building (excluding parking spaces and storage areas).

If the application of the formulae 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.

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

49.9 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.

49.10 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.

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

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

Where:

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

IE = interest Lot Entitlement for the Lot.

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

If the amount of the premium is also in respect of components of the Building other than the Scheme, then the "Premium" will be determined in accordance with the division of costs arrangements for insurance in the Building Management Statement.

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.

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

49.13 If any Outgoings (other than land tax which is dealt with elsewhere in this clause) are assessed but unpaid at Settlement, then the Seller will provide a cheque for the amount at Settlement and 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.

49.14 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.

49.15 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.

49.16 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.

50. Telecommunications Adjustment

50.1 The Buyer acknowledges and agrees:

- (a) it is responsible for payment of any moneys chargeable or charged by any telecommunications carrier for connection of the Lot to a broadband network or for activation of a broadband or voice service to the Lot (at any time before or after Settlement) (**Connection Charges**);
- (b) the Seller may elect to pay the Connection Charges before Settlement;
- (c) if the Seller has paid the Connection Charges on or before Settlement, then the Buyer must reimburse the Seller at Settlement for the amount of the Connection Charges by way of a plus adjustment to the Price; and
- (d) if the Seller has not paid the Connection Charges on or before Settlement, then the Buyer must provide to the Seller at Settlement a Bank Cheque drawn in favour of the telecommunications carrier for the full amount of that Connection Charge.

O SETTLEMENT

51. Settlement Date

51.1 When the Conditions Subsequent in relation to recording of a 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 60 days after the last of the other Conditions Subsequent have been satisfied.

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

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

52. Time & Place for Settlement

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

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

52.2 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.

53. Extensions of the Settlement Date

53.1 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.

53.2 If the Buyer requests an extension of the Settlement Date, the Seller may agree to the extension in the Seller's total 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.

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

53.4 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.

54. **Transfer Documents**

- 54.1 The Seller must prepare the Transfer Documents, but may leave out personal details regarding the Buyer, other than the name of the Buyer.
- 54.2 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.
- 54.3 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.
- 54.4 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.
- 54.5 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.
- 54.6 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.

55. **Settlement Statement**

- 55.1 Prior to Settlement, the Seller may give to the Buyer a Settlement Statement.
- 55.2 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.
- 55.3 If the Buyer does not comply with the requirements of sub-clause 2:
 - (a) the Buyer cannot later Object or assert that the Seller was not ready, willing or able to effect Settlement because of an error or omission in the Settlement Statement; and

- (b) the Settlement Statement is taken to be correct and to list all the Settlement Materials.

- 55.4 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 Settlement on the basis of an error or omission that could have been drawn to the Seller's attention earlier.
- 55.5 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.
- 55.6 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.

56. **Procedure at Settlement**

- 56.1 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 sub-clause 2), provide or deliver to the Buyer at Settlement:
 - (a) separate indefeasible Title;
 - (b) unstamped Transfer Documents capable of immediate registration (after stamping) if not already in the possession of the Buyer's Solicitor;
 - (c) the Keys; and
 - (d) vacant possession of the Property.
- 56.2 It is sufficient compliance with sub-clauses 1(c) and 1(d) if the Seller makes the Keys available for collection after Settlement from the Agent, any onsite manager of the Scheme or some other party nominated by the Seller, including the Seller itself.
- 56.3 The Seller need not comply with sub-clauses 1(c) and 1(d) if the Seller does not have vacant possession of the Property because a tenant has been procured for the Property by or on behalf of the Buyer (without limitation, a tenant for the Property will have been procured on behalf of the Buyer if procured by any party who is appointed by the Buyer to manage the Property, even if the appointment is made before the Buyer is the owner of the Property).
- 56.4 The Buyer will only be entitled to receive a PPS Release from a Secured Party in respect of a Security Interest registered on the PPSR where the 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.

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

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

57. **Chattels**

57.1 On Settlement, the Lot will contain the Chattels.

57.2 Ownership of the Chattels will pass to the Buyer on Settlement.

57.3 Any furniture shown on any layout plan of the Lot showing suggested furniture layout does not in any way mean that the furniture is sold by the Seller to the Buyer under this Contract. Furniture is only sold if specifically provided for in the Special Conditions or in a separate agreement.

P **DEFAULT**

58. **Buyer's Default**

58.1 ***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 writing signed by or on behalf of the Seller.
- (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.

58.2 ***If Seller affirms***

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

58.3 ***If Seller terminates***

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

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

- (e) resell the Property.

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

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

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

58.5 ***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.

58.6 ***Buyer indemnifies Seller***

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

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

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

Without limiting any other right or remedy of the Buyer including those under this Contract or any right under statute or at common law, if the Seller breaches or fails to comply with an Essential Term or makes a fundamental breach of an intermediate term of this Contract, the Buyer may affirm or terminate this Contract. No affirmation or termination of this Contract is effective unless it is in writing signed by or on behalf of the Buyer. 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.

59.2 **If Buyer affirms**

If the Buyer affirms this Contract under sub-clause 1, 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.

59.3 **If Buyer terminates**

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

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

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

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

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

59.5 **Seller indemnifies Buyer**

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

59.6 **Insolvency of Seller**

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.

60. **Interest**

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

- (a) in the case of the Buyer, at Settlement, pay to the Seller interest on that money; and

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

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

60.2 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).

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

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

61.1 Despite any default or other wrongful act or omission by the Seller under this Contract 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:
 - (i) giving particulars of the default or other wrongful act or omission;
 - (ii) offering the Seller the opportunity to remedy the default or other wrongful act or omission (even if the Seller's conduct amounts to a repudiation of this Contract) by a specified date, being a reasonable time (given the nature of the default) but in any event not less than 10 Business Days after such Notice is given to the Seller; and
 - (iii) specifying that the Buyer intends terminating, cancelling, avoiding or declaring itself not bound by this Contract (as the case may be) if the Notice is not complied with by the date specified in the Notice; and
- (b) the Seller has not remedied the default or other wrongful act or omission complained of in the Buyer's Notice by the date specified.

61.2 In this clause, the expression *default* includes a breach of or failure to comply with any term or condition of this Contract as well as any failure to comply with a Statutory Obligation relating to this Contract.

Q LEGISLATIVE DISCLOSURE & OTHER ISSUES

62. **Disclosure**

62.1 **Application of clause**

The promises and acknowledgements of the Buyer in this clause are subject to the sub-clause below titled "Retraction of Acknowledgements or Promises".

62.2 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 CMS included in the Disclosure Documents; and
- (d) the Identification Plan, included in the Disclosure Documents, clearly identifying the Lot.

62.3 Separate Notices & Statements

- (a) The Buyer acknowledges that the Statutory Disclosure Statements including the notices and statements acknowledged to have been received under sub-clause 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.

62.4 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.

62.5 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 Variations to the Property, the Building, the Scheme and the Common Property,

and if any of the matters referred to in paragraphs (a) to (d) above 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.

62.6 Use of Property & other Promises

- (a) In this sub-clause "Personal Use" means the use of the Property by the Buyer for personal, domestic or household use or consumption.
- (b) 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 Building 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 Variations to the Scheme, the Building, the Common Property and the Property;
 - (B) permit termination and dealings with the Deposit and Interest on termination;
 - (C) limit the ability of the Buyer to Object or participate in the 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 Building and 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 Building and the relative commercial burdens and risks to which each of the Seller and the Buyer is exposed.

62.7 **Proposed CMS**

The Buyer acknowledges that:

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

62.8 **Retraction of Acknowledgements or Promises**

- (a) Subject to sub-clause (b) below, 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) Sub-clause (a) above 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.

63. **Buyer's Acknowledgements**

The Buyer acknowledges and understands that:

- (a) the Seller will rely on and has been induced by the Buyer's acknowledgements, representations, warranties and promises contained in the preceding clause and in this Contract more generally, in its decision to enter into this Contract and sell the Property to the Buyer and in its conduct of the transaction arising out of this Contract and all matters incidental to it;
- (b) but for the Buyer's acknowledgements, representations, warranties and promises made in this Contract, the Seller would not have entered into this Contract and would not have agreed to sell the Property to the Buyer and would not have incurred the legal and commercial risk and expense in doing so;
- (c) if the Buyer seeks to resile from one or more of the acknowledgements, representations, warranties or promises it has given or made in the Contract, the Seller may be significantly disadvantaged; and
- (d) in these circumstances, it would be unfair and unreasonable for the Buyer to seek to resile from one or more of the acknowledgements, representations, warranties or promises it has given or made in the Contract and therefore, the Buyer may be unable in law to do so.

64. **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.

65. **Section 214 BCCM Act**

65.1 The Parties agree that a "further statement" for the purposes of Section 214 of the BCCM Act may take the form of a Notice, but a Notice will not be considered to be a "further statement" for the purposes of Section 214 unless the Notice specifically states that it is intended to constitute a further statement.

65.2 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.

65.3 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.

65.4 Nothing contained in sub-clause 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.

65.5 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.

65.6 In relation to any obligation the Seller has to give the Buyer further or rectifying disclosures or statements, including under Section 214(2) of the BCCM Act to give a "further statement", without limiting the way such further or rectifying disclosure or statements may be given, such further disclosure or statements (however described) may be given in the form of a letter or other document (with or without attachments) from the Seller's Solicitor (signed by the Seller's Solicitor as the Seller's duly authorised signatory/agent) to the Buyer's Solicitor, who, the Buyer agrees, is the duly authorised agent of the Buyer to receive the further or rectifying disclosure or statement.

66. **Other Engagements**

66.1 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" under Section 214 of the BCCM Act 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 under Section 214 of the BCCM Act.

R BUILDING MANAGEMENT STATEMENT

67. **Building Management Statement**

67.1 At Settlement the relationship between the Scheme and the other components within the Building will be governed by the Building Management Statement.

67.2 As at formation of this Contract, the Seller has not yet determined the terms of the Building Management Statement. The Seller reserves the right to record the Building Management Statement with the Queensland Land Registry on such terms and conditions as the Seller determines. Provided the Seller acts honestly and in good faith in determining the terms and conditions of the Building Management Statement, the Buyer must not Object about the terms of the Building Management Statement or its recording as an encumbrance on the Title or the title of the Common Property.

67.3 If the Disclosure Documents include a proposed Building Management Statement, the Buyer agrees that that document is in a draft form only and may not contain all details which the final registered Building Management Statement will contain including about supply of services, sharing of costs, shared facilities, insurance, dispute resolution, rights of access, rights of support and shelter and so on and may contain terms that will be deleted. Provided the Seller acts honestly and in good faith in determining the terms and conditions of the

Building Management Statement, the Buyer must not Object because the terms of the final registered Building Management Statement are in any way different from the proposed Building Management Statement.

S POWER OF ATTORNEY

68. **Power of Attorney**

68.1 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.

68.2 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; and
- (b) in relation to other matters, to complete, sign and lodge any instrument of consent to any application for:
 - (i) approval for the further carrying out of the development of the Building or any part of it providing such application is for an approval which, if granted and given effect to, will not have a direct

material adverse effect on the use or the value of the Property; or

- (ii) any licences or approvals required by any other owner or occupant of a lot included in the Building for the conduct of a business within or from their lot including in relation to liquor licensing approvals.

68.3 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.

68.4 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.

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

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

68.7 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.

68.8 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.

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

T STAGED SETTLEMENTS

69. **Staged Settlements**

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

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

- 69.3 The Buyer will not Object to the Seller effecting Staged Settlements and the Buyer will not Object to continued construction activities within the Scheme including:
- (a) building improvements or any other things done on or within 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 Scheme (including Common Property) for construction access and the storage of building materials, vehicles, equipment or fuel; and
 - (c) the Seller and any party authorised by the Seller causing areas within the Scheme to be temporarily closed off to facilitate the continued construction of the Scheme,
- despite these things occurring after Settlement even if for an extended period after Settlement.

U GENERAL & OTHER MATTERS

70. Contract Execution, Counterparts & Exchange

- 70.1 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.
- 70.2 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one and the same instrument.
- 70.3 This Contract, including counterparts of it, may be exchanged by any means, including electronically.
- 70.4 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.
- 70.5 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.
- 70.6 Each person who signs this Contract as an authorised officer, agent, signatory or trustee of a Party warrants and represents to the other Party that at the date the person executed this Contract they had full authority to execute this Contract in that capacity.

71. 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.

72. 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.

73. Buyer's Obligation to Disclose Rebates etc

- 73.1 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.

73.2 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.

74. Legislative Termination Rights

74.1 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.

74.2 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.
- 74.3 A termination right under sub-clause 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.
- 74.4 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.

75. Interpretation

75.1 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.

75.2 Use of word "including"

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

75.3 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.

75.4 Headings

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

75.5 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 Party that is a trustee is bound both personally and as a trustee.

75.6 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.

75.7 Inconsistencies

- (a) 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.
- (b) If there is an inconsistency or discrepancy in respect of any part of the Property as shown, illustrated or set out in the Identification Plan, the Floor Layout Plan and the Specifications, the Parties agree that the inconsistency or discrepancy will be resolved (without limiting the Seller's rights under this Contract to make Variations) by reference to the following descending order of precedence:
 - (i) firstly, the Identification Plan; then
 - (ii) the Specifications; then
 - (iii) lastly, the Floor Layout Plan.

For example, if the area of the Lot is shown in the Identification Plan as being 100m² and on the Floor Layout Plan as 110m² then the Identification Plan will prevail and the area of the Lot will be taken to be 100m².

75.8 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.

75.9 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.

75.10 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.

76. Performance of Contract

- 76.1 The Seller is entitled to perform this Contract in a manner which is most beneficial to it.
- 76.2 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.

77. Time

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

77.2 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. Risk

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

83. Costs and Transfer Duty

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

83.2 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.

84. Notices

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

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

84.3 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.

84.4 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.

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

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

84.7 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.

84.8 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.

84.9 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.

84.10 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.

- 84.11 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.

85. Marketing

- 85.1 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.
- 85.2 The Seller (together with its guests and invitees) reserves the right to use any part of 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.

86. Variation of Contract

- 86.1 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.
- 86.2 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.
- 86.3 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.

87. Waiver

- 87.1 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 titled "Variation of Contract" above will apply to any question of authority under this clause.
- 87.2 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
- 87.3 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.

88. 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.

89. 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.

90. Applicable Law

Queensland law applies to this Contract.

91. Further Acts

- 91.1 If requested by the other Party, each Party must, at its own expense, do everything reasonably necessary to give effect to this Contract.
- 91.2 Without limiting sub-clause 1, if requested to do so by the Seller, the Buyer must, at its own expense and within a reasonable period of time (and, in any event, before Settlement):
- (a) do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is possible and lawful to do so) or resolve any ambiguity in this Contract so as to facilitate this Contract being given effect to and being operative and enforceable as between the Parties; and
 - (b) do all things, sign all documents, give all necessary consents, enter into all necessary agreements or deeds as requested by the Seller in order to enable the Seller to perform its obligations under this Contract (**Additional Obligations**) and in order to enable Settlement even if Additional Obligations are imposed on the Buyer providing that the rights of the Buyer under this Contract are not significantly diminished.
- 91.3 If the rights of the Buyer under this Contract are significantly diminished as a result of a request by the Seller pursuant to sub-clause 2, the Buyer must carry out the requested action if:
- (a) the Buyer became aware or ought to have become aware of the possible diminution of rights as part of any reasonable enquiries carried out before the Contract Date; or
 - (b) the Buyer became aware or ought to have become aware of the possible diminution of rights as part of any reasonable enquiries carried out after the Contract Date; or

- (c) the Seller offers to provide reasonable compensation to the Buyer to offset the diminution of rights.
- 91.4 Without limiting sub-clause 1, if requested to do so by the Seller, the Buyer must, at its own expense, do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is lawful to do so) or resolve any ambiguity in this Contract so as to facilitate this Contract being considered by the Seller's construction financier as a presale for construction funding purposes.
- 91.5 Without limiting sub-clause 1 or 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.
92. **Instalment Contracts**
- 92.1 In this clause:
- 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 the PLA Act.
- 92.2 If:
- (a) it is found that this Contract is an Instalment Contract; or
 - (b) any interpretation of any annexure or Special Condition causes this Contract to be or become an Instalment Contract; or
 - (c) any negotiation or agreement reached between the Seller and the Buyer following formation of this Contract causes this Contract to be or become an Instalment Contract,
- then the Buyer consents for the purposes of Section 73(1) of the PLA Act to the Seller:
- (i) mortgaging and or charging the Parcel (including the Property) on terms and conditions the Seller in its discretion determines; and
 - (ii) selling parts of the Parcel (for example, other lots in the Scheme) to other buyers.
- 92.3 Despite any contrary provision in this Contract including a contrary provision contained in the Special Conditions, the Buyer is not bound to make a payment or payments of amounts which total in excess of the Prescribed Deposit without becoming entitled to receive a conveyance in exchange for the payment or payments. If the Buyer pays more than the Prescribed Deposit as deposit, the Buyer is entitled to a refund of the amount in excess of the Prescribed Deposit upon written request to the Seller. If the Seller refunds an amount paid in excess of the Prescribed Deposit, the Buyer will still be required to pay the Price less any cash deposit held by the Deposit Holder at Settlement.
- 92.4 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.
- 92.5 The provisions of this clause are mandatory overriding provisions and override any other provision of this Contract including the Special Conditions. The Buyer is not bound to make payment or payments of amounts which total in excess of the Prescribed Deposit without being entitled to receive a conveyance in exchange for the payment or payments.
93. **No Caveats**
- 93.1 The Buyer must not lodge or register any caveat over the Scheme Land or the Parcel. This is an Essential Term.
- 93.2 Nothing in sub-clause 1 limits any rights of the Buyer to lodge or register a caveat over the Lot but only after Title is created.
94. **Priority Notice**
- The Buyer may lodge a "Settlement Notice" or "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.
95. **Assignment**
- 95.1 In this clause, the Seller's interest in this Contract means the benefit of the obligations owed to the Seller by the Buyer and any Guarantor.
- 95.2 The Seller may at any time assign its interest or a part of its interest in the Parcel or the Scheme Land (or any part of it) to another person. The Buyer consents to the assignment including for the purposes of Section 73(1) of the PLA.
- 95.3 The Seller may, in its discretion, assign the Seller's interest in this Contract to any party, and, if it does so, the Seller must deliver to the Buyer:
- (a) Notice of assignment of the Seller's interest in this Contract in accordance with Section 199 of the PLA; and
 - (b) a deed poll signed by the assignee, under which the assignee agrees, for the benefit of the Buyer, to be bound by the obligations of the Seller under this Contract.
- 95.4 Upon delivery to the Buyer of the Notice and deed:
- (a) the Seller is released from all liabilities and obligations to the Buyer under this Contract;
 - (b) the Buyer and any Guarantor (if any) become bound by the terms of this Contract but in favour of the assignee, as if the assignee was originally named in this Contract instead of the Seller;
 - (c) the Buyer must, within 10 Business Days, if the Buyer has secured payment of the Deposit by way of lodgement of a Deposit Guarantee, which cannot be assigned to the assignee, replace the Deposit Guarantee with either a cash Deposit or a Compliant Bank Guarantee

- (or other instrument acceptable to the Seller in its discretion) which specifies the assignee as the Seller; and
- (d) any cash Deposit will be held for the benefit of the Buyer and the assignee on the terms of this Contract.
- 95.5 If directed by the Seller, the Buyer must, within 5 Business Days of direction (and before the Seller assigns to the assignee the Seller's interest in this Contract), waive the benefit of any cooling off period that may apply or arise as a result of the assignment.
- 95.6 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.
96. **Name**
- 96.1 The Buyer agrees that as at the Contract Date, the Seller intends the name for the Scheme to be the Name. 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 Scheme, the Seller may select an alternative name for the Scheme. If this happens, the Buyer agrees that it must not Object.
- 96.2 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 Body Corporate the right to use the Name as the name of the Scheme;
- (c) transfer to any party, including any service contractor or letting agent of 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.
97. **Privacy Collection Notice**
- 97.1 **Application** - If the Seller is required by law to comply with the *Privacy Act 1988* (Cth) (the Act), then this clause applies.
- 97.2 **Privacy Officer** - The Seller's Privacy Officer is Brodie Lister. The Reference Schedule sets out the contact details for the Seller's Privacy Officer (care of the Seller's contact details in the Reference Schedule), and how the Buyer may view the Seller's full privacy policy.
- 97.3 **Collection of the Buyer's personal information** - The Seller collects personal information about the Buyer so that the Seller can administer the Seller's dealings with the Buyer, provide the Buyer with services and deal with any requests the Buyer may have. If the Seller does not collect the Buyer's personal information, then the Seller may be unable to deal with the Buyer's request or provide the Buyer with services and benefits, and the Seller may not be able to proceed with this Contract.
- 97.4 **Use of the Buyer's personal information** - The Seller uses the Buyer's personal information for the purpose of carrying out the Seller's functions and activities described on the Seller's website and in the Seller's marketing and other material, and for direct marketing (see below).
- 97.5 **Disclosure of the Buyer's personal information** - The Seller may disclose the Buyer's personal information to third parties, such as the Seller's related companies, IT providers who run the Seller's IT services, payment processors who process payments, marketing providers who provide marketing and public relations services, competition organisers, social media marketers, contractors, financiers, credit providers, insurers, marketing agents, sales agents, rental agents and their staff, and any government body where the Seller is required to provide the Buyer's personal information by law. The Seller does not normally send the Buyer's personal information offshore, but should the Seller do so, the Seller will take reasonable steps to inform the Buyer of the country where the Seller's personal information is sent.
- 97.6 **Seller's Privacy Policy** - The Seller's privacy policy sets out the Seller's approach to the management of personal and sensitive information. Subject to the Act, the Buyer can have access to and seek correction of the Buyer's personal and sensitive information. The Seller's privacy policy contains information about how the Buyer can do this. The Seller's privacy policy also contains information about how the Buyer can make a complaint about a breach of privacy.
- 97.7 **Direct Marketing** - By signing this Contract, the Buyer consents to the Seller using the Buyer's personal information as described above and to let the Buyer know about products and services that the Seller thinks may be of interest to the Buyer, via direct marketing through electronic and other means. However, the Buyer may opt out of receiving marketing information at any time by using the contact details provided in the Reference Schedule. For more information, see the Seller's privacy policy.
98. **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; and
- (iii) contact details of the new buyer;
- (b) a copy of the power of attorney in favour of the Seller required to be obtained from the new buyer; and
- (c) any other information reasonably required by the Seller.
99. **Representations on Views**
- 99.1 This clause applies if the Buyer asserts that statements were made to the Buyer by or on behalf of the Seller

about views or the outlook available from the Building or the Lot at or after Settlement.

99.2 The Buyer acknowledges that:

- (a) notwithstanding what the Buyer may have been told, the Seller makes no promise and provides no assurance that any particular view or outlook will be available or will continue to be available from the Building or the Lot;
- (b) the Seller does not know what future development may occur in respect of properties adjacent to or surrounding the Parcel; and
- (c) if properties adjacent to or surrounding the Parcel are developed, such development may interrupt the views and outlook from the Building or the Lot.

99.3 The Buyer must not Object as a result of the actual views or outlook available from the Building or the Lot at or after Settlement being affected by any development in the areas around the Parcel which occurs before or after Settlement.

100. Provision of Information

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

100.2 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.

101. 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.

102. Electronic Conveyancing

102.1 The Seller is in no way obliged or required to carry out or perform the conveyance under this Contract or Settlement under any electronic conveyancing or similar system, unless required to do so by law.

102.2 The Seller may require the Parties to use any electronic conveyancing or similar system to carry out or perform the conveyance of this Contract or any part of it or to carry out or perform Settlement.

102.3 If the Seller elects to exercise any right under sub-clause 2, the Buyer must carry out or perform the conveyance under this Contract or Settlement in the manner in which the Seller has elected.

102.4 The Buyer must not Object because of any of the matters contained in this clause or the exercise or non exercise of rights by the Seller pursuant to it.

103. Promotional Materials

103.1 The Promotional Materials constitute a depiction of the Seller's intentions in respect of the Building 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 Building.

103.2 The Promotional Materials do not form part of the description of the Building in this Contract or the Disclosure Documents.

103.3 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 Building or to carry it out in any particular manner or sequence or to complete it is fixed and unequivocal;
- (b) the Building will be in accordance with the Promotional Materials;
- (c) the Seller owns or will own all of the land required to undertake the Building or any part of it;
- (d) the Seller has received or will receive all necessary approvals to undertake the Building, 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 Building;
- (f) the Seller has an unequivocal intention to proceed with the entire Building 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 Building as depicted in the Promotional Materials or at all;
- (h) all aspects of the Building as shown in the Promotional Materials will be included in the Building; and
- (i) the appearance, components and character of the Building is fixed and will not change from that which is depicted in the Promotional Materials.

103.4 The Buyer acknowledges that the undertaking of the Building 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.

104. Special Conditions

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

GUARANTEE AND INDEMNITY

Parties:

MPG ELSTON PTY LIMITED ACN 606 476 868	(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:
 - 3.1 unconditionally and irrevocably guarantees to the Seller on demand the due and punctual performance by the Buyer of all of its obligations under the Contract (irrespective of when those obligations are to be performed); and
 - 3.2 as a separate undertaking, unconditionally and irrevocably indemnifies the Seller 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 may suffer as a result of or arising directly or indirectly out of:
 - (a) any default, breach or non-compliance by the Buyer of the Contract;
 - (b) a breach by the Buyer of any acknowledgement, promise, representation, warranty or the like by the Buyer in the Contract or otherwise, including any promise, representation, warranty or the like which was incorrect or misleading when made;
 - (c) the Buyer having no obligations or being relieved of any obligations or any obligations of the Buyer becoming unenforceable under the Contract; or
 - (d) making, enforcing and doing anything in connection with this Guarantee and Indemnity.
4. The Guarantor agrees that the Guarantor's liability and obligations under this Guarantee and Indemnity are not affected by any:
 - 4.1 termination of the Contract by the Seller as a result of any default or breach by the Buyer;
 - 4.2 insolvency, bankruptcy, death, incompetency or winding up of the Buyer or of any Guarantor;
 - 4.3 assignment of the Contract by the Buyer or the Seller;
 - 4.4 grant of time or other concession to the Buyer by the Seller or to the Seller by the Buyer;
 - 4.5 compromise, waiver, variation or novation of any of the rights of the Seller against the Buyer under the Contract;
 - 4.6 delay by the Seller in exercising its rights or if the Seller does not sue the Buyer;
 - 4.7 acquiescence, acts, omissions or mistakes on the part of the Seller;
 - 4.8 purported rights of the Seller against the Buyer under the Contract being invalid, void or unenforceable for any reason including by operation of law or statute;
 - 4.9 future variations or alterations to the Contract agreed between the Buyer and the Seller, 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;
 - 4.10 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;
 - 4.11 waiver or other indulgence or the discharge or release of a Buyer or any other person from any obligation;
 - 4.12 guarantee and indemnity from any other person who has entered into this Guarantee and Indemnity not being, for any reason whatsoever, enforceable; or
 - 4.13 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.

5. This Guarantee and Indemnity:
- 5.1 extends to cover the Buyer's obligations under the Contract:
- (a) regardless of any compromise, waiver or variation of any of the Seller's rights against the Buyer under the 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 Contract; and
- 5.2 is a continuing guarantee and indemnity and, despite Settlement, remains in full force and effect for as long as the Buyer has any liability or obligation to the Seller under the Contract and until all of those liabilities or obligations have been fully discharged.
6. The Guarantor represents to the Seller 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.
7. The Seller may assign its rights under this Guarantee and Indemnity without affecting or discharging the Guarantor's liability as surety in any way.
8. The Seller does not have to sue the Buyer or enforce any rights against any person before claiming under this Guarantee and Indemnity.
9. This Guarantee and Indemnity binds each Guarantor individually and all of them jointly.
10. This Guarantee and Indemnity is a separate, collateral instrument to the Contract.
11. The liability of the Guarantor is not discharged by payment to the Seller which is later avoided by law. If that occurs, the respective rights and obligations of the Seller and the Guarantor will be restored as if the payment had not been made.
12. Money paid to the Seller by the Guarantor must be applied first against payment of costs, charges and expenses under clause 3.2, then against other obligations under this Guarantee and Indemnity.
13. If there is any ambiguity in this Guarantee and Indemnity, it is to be interpreted in favour of the Seller. Any void, voidable or illegal term of this Guarantee and Indemnity is to be read down or severed leaving the balance operable.
14. The Guarantor acknowledges and agrees that this Guarantee and Indemnity was signed by the Guarantor before the Seller signed the Contract.
15. This Guarantee and Indemnity may be executed and exchanged in any manner permitted under the Contract for the execution and exchange of that document (including electronically).
- Any terms defined in the Contract have the same meaning when used in this Guarantee and Indemnity. The use of the word "**including**" (and any similar expression) is not used as a word of limitation. In any combination or list of options, the use of the word "**or**" is not used as a word of limitation.

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

SIGNED by Guarantor 1 named in the Reference)
Schedule in the presence of:)
SIGNATURE – GUARANTOR 1

.....
Witness

SIGNED by Guarantor 2 named in the Reference)
Schedule in the presence of:)
SIGNATURE – GUARANTOR 2

.....
Witness

SIGNED on behalf of **MPG ELSTON PTY LIMITED**)
ACN 606 476 868 by its duly authorised signatory:)