

# Contract for Residential Lots in a Community Titles Scheme

*Ninth Edition*

*This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Residential Lots in a Community Titles Scheme in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.*

**The Seller and Buyer agree to sell and buy the Property under this contract.**

## REFERENCE SCHEDULE

**Contract Date:** \_\_\_\_\_

### SELLER'S AGENT

NAME:			
ABN:		LICENCE NO:	
ADDRESS:			
SUBURB:		STATE:	POSTCODE:
PHONE:	MOBILE:	FAX:	EMAIL:

### SELLER

NAME:	UNISON PROJECTS PTY LTD A.C.N. 119 689 771		ABN:	
ADDRESS:	c/- Warlow Scott Lawyers			
	GPO Box 2495			
SUBURB:	Brisbane	STATE:	QLD	POSTCODE: 4001
PHONE:	MOBILE:	FAX:	EMAIL:	
(07) 3002 7444		(07) 3002 7474		

NAME:			ABN:	
ADDRESS:				
SUBURB:		STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:	

### SELLER'S SOLICITOR

■ or any other solicitor notified to the Buyer

NAME:	Warlow Scott Lawyers			
REF:		CONTACT:	Felicity Dopheide	
ADDRESS:	GPO Box 2495			
SUBURB:	Brisbane	STATE:	QLD	POSTCODE: 4001
PHONE:	MOBILE:	FAX:	EMAIL:	
(07) 3002 7444		(07) 3002 7474	<a href="mailto:fad@warlowscott.com.au">fad@warlowscott.com.au</a>	

INITIALS

**BUYER**

NAME:				ABN:		
ADDRESS:						
SUBURB:				STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:			
NAME:				ABN:		
ADDRESS:						
SUBURB:				STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:			

**BUYER'S AGENT** *(If applicable)*

NAME:						
ABN:			LICENCE NO:			
ADDRESS:						
SUBURB:				STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:			

**BUYER'S SOLICITOR** *(If applicable)*■ *or any other solicitor notified to the Seller*

NAME:						
REF:			CONTACT:			
ADDRESS:						
SUBURB:				STATE:	POSTCODE:	
PHONE:	MOBILE:	FAX:	EMAIL:			

**PROPERTY**

Lot:	ADDRESS:	Lot _____ / 44 Fern Parade				
	SUBURB:	Griffin	STATE:	QLD	POSTCODE:	4503
Description:	Lot:	On: <input type="checkbox"/> BUP <input type="checkbox"/> GTP <input checked="" type="checkbox"/> SP			288019	
	Scheme:	'Terraces on Griffin Pocket'			Community Titles Scheme: 49668	
Title Reference:						
Present Use:	Residential					
Local Government:	Moreton Bay					
Excluded Fixtures:	Nil					

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Included Chattels:

Nil

## PRICE

Deposit Holder: Warlow Scott Lawyers

Deposit Holder's Trust Account: Warlow Scott Lawyers Trust Account

Bank: NAB

BSB: 084 391

Account No: 476 727 045

Purchase Price:

\$

■ Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

Deposit:

\$

Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below.

\$

Balance Deposit (if any) payable on:

Default Interest Rate:

%

■ If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

## FINANCE

Finance Amount:

\$

■ Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier:

Finance Date:

## BUILDING AND/OR PEST INSPECTION DATE

Inspection Date:

■ If 'Inspection Date' is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.

## MATTERS AFFECTING PROPERTY

### Title Encumbrances:

Is the Property sold subject to any Encumbrances? ☐ No ☒ Yes, listed below

Rights and interests reserved to the Crown by Deed of Grant No. 10364144  
Community Management Statement 49688  
All statutory and unregistered easements by Council or other relevant authority

Easements on Common Property: Easement in Gross No. 716050096, Easement in Gross No. 716050098

■ **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

### Tenancies:

TENANTS NAME: Nil

■ If the property is sold with vacant possession from settlement, insert 'Nil'. Otherwise complete details from Residential Tenancy Agreement.

TERM AND OPTIONS:

STARTING DATE OF TERM:

ENDING DATE OF TERM:

RENT:

BOND:

\$

\$

INITIALS

**Managing Agent:**

AGENCY NAME: N/A

PROPERTY MANAGER:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

FAX:

MOBILE:

EMAIL:

**POOL SAFETY FOR NON-SHARED POOLS***Complete the following questions if there is a non-shared pool in the Lot***Q1.** Is there a non-shared pool on the Lot?☐ Yes☒ No Clause 4.2 of this contract does not apply**Q2.** If the answer to Q1 is Yes, is there a Compliance or Exemption Certificate for the non-shared pool at the time of contract?☐ Yes Clause 5.3(1)(f) applies☐ No Clause 4.2 applies (except for auction and some other excluded sales)**Q3.** If the answer to Q2 is No, has a Notice of No Pool Safety Certificate been given prior to contract?☐ Yes☐ No

■ **WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.

■ **WARNING TO BUYER:** If there is no Compliance or Exemption Certificate at Settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a Pool Safety Certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.

■ If there is a pool on the **Lot** and Q2 is not completed then Clause 4.2 applies.

■ *Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.*

Pool Safety Inspector:

Pool Safety  
Inspection Date:

■ The Pool Safety Inspector must be licensed under the Building Act 1975 and Building Regulation 2006.

■ Clause 4.2(2) applies except where this contract is formed on a sale by auction and some other excluded sales.

**STATUTORY WARRANTIES AND CONTRACTUAL RIGHTS**

The Seller gives notice to the Buyer of the following matters:

**(a)** Latent or Patent Defects in Common Property or Body Corporate Assets (s 223(a)(b))\*

NIL

**(b)** Actual or Contingent or Expected Liabilities of Body Corporate (s 223(2)(c)(d))\*

NIL

**(c)** Circumstances in Relation to Affairs of Body Corporate (s 223(3))\*

NIL

**(d)** Exceptions to Warranties in clause 7.4(3)\*

NIL

■ **WARNING TO SELLER:** The Body Corporate and Community Management Act 1997 and the Contract include warranties by the Seller about the Body Corporate and the Scheme land. Breach of a warranty may result in a damages claim or termination by the Buyer. Sellers should consider whether to carry out an inspection of the Body Corporate records to complete this section.

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(e) Proposed Body Corporate Resolutions (clause 8.4)\*

NIL

\*Include in attachment if insufficient space

ADDITIONAL BODY CORPORATE INFORMATION

Interest Schedule Lot Entitlement of Lot:

Aggregate Interest Schedule Lot Entitlement:

280

Contribution Schedule Lot Entitlement of Lot:

Aggregate Contribution Schedule Lot Entitlement:

280

INSURANCE POLICIES

Insurer:

CHU Strata Insurance

Policy No: CAH0003462

Building:

\$220,000.00 (Community Property), \$33,000.00 (Community Property (Community Income).

Public liability:

\$10,000,000.00

Other:

Voluntary Workers (\$200,000.00), Fidelity Guarantee (\$100,000.00), Office Bearer's Legal Liability (\$1,000,000.00)

POOL SAFETY FOR SHARED POOLS

Only complete the following questions if there is a shared pool on the Land.

A. Is there a shared pool on the Land or on adjacent land used in association with the Land?

☐ Yes ☒ No

B. If the answer to A is Yes, is there a Compliance or Exemption Certificate for the shared pool at the time of contract?

☐ Yes ☐ No

C. If the answer to B is No, has a Notice of No Pool Safety Certificate been given prior to contract?

☐ Yes ☐ No

Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

ELECTRICAL SAFETY SWITCH AND SMOKE ALARM

This section must be completed unless the Lot is vacant.

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose Socket Outlets is:  
(select whichever is applicable)

☒ installed in the residence

☐ not installed in the residence

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:  
(select whichever is applicable)

☒ installed in the residence

☐ not installed in the residence

■ **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.

■ **WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the Fire and Emergency Services Act 1990.

NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

The Seller gives notice to the Buyer in accordance with Section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Lot:  
(select whichever is applicable)

■ **WARNING:** Failure to comply with s83 Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

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- ☒ is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- ☐ is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

## SPECIAL CONDITIONS

REFER TO THE FOLLOWING ANNEXURES: -

ANNEXURE "A" – SPECIAL CONDITIONS

ANNEXURE "B" – GUARANTEE

ANNEXURE 'C' – PROXY FORM FOR BODY CORPORATE GENERAL MEETINGS (BCCMA FORM 6)

## SETTLEMENT

SETTLEMENT  
DATE:

\_\_\_\_\_ days from the Contract Date

■ *or the next Business Day if that is not a  
Business Day in the Place for Settlement.*

PLACE FOR  
SETTLEMENT:

Brisbane CBD

■ *If Brisbane is inserted, this is a reference to  
Brisbane CBD.*

## SIGNATURES

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: \_\_\_\_\_

WITNESS: \_\_\_\_\_

BUYER: \_\_\_\_\_

WITNESS: \_\_\_\_\_

SELLER: \_\_\_\_\_

WITNESS: \_\_\_\_\_

SELLER: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DEPOSIT  
HOLDER:

■ *Who acknowledges having received the Initial Deposit and agrees to  
hold that amount and any Balance Deposit when received as  
Deposit Holder for the parties as provided in the Contract.*

INITIALS

# TERMS OF CONTRACT

## FOR RESIDENTIAL LOTS IN A COMMUNITY TITLES SCHEME

### 1. DEFINITIONS

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule and the Disclosure Statement have the meanings shown opposite them unless the context requires otherwise; and
  - (2) (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
  - (b) **"ATO Clearance Certificate"** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
  - (c) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clause 2.6;
  - (d) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).
  - (e) **"Body Corporate"** means the body corporate of the Scheme;
  - (f) **"Body Corporate Debt"** has the meaning in the Regulation Module but excludes the Body Corporate Levies for the period which includes the Settlement Date;
  - (g) **"Body Corporate Levies"** means regular periodic contributions levied on the owner of the Lot (including, if applicable, levied under an exclusive use by-law) excluding any Special Contribution;
  - (h) **"Bond"** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
  - (i) **"Building"** means any building that forms part of the Lot or in which the Lot is situated;
  - (j) **"Building Inspector"** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
  - (k) **"Business Day"** means a day other than:
    - (i) a Saturday or Sunday;
    - (ii) a public holiday in the Place for Settlement; and
    - (iii) a day in the period 27 to 31 December (inclusive)
  - (l) **"CGT Withholding Amount"** means the amount determined under s14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under s14-235;
  - (m) **"Compliance or Exemption Certificate"** means:
    - (i) a Pool Safety Certificate; or
    - (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
    - (iii) an exemption from compliance on the grounds of impracticability under section 245B of the *Building Act 1975*;
  - (n) **"Compliant Smoke Alarm"** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;
  - (o) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (p) **"Court"** includes any tribunal established under statute;
  - (q) **"Disclosure Statement"** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997*;
  - (r) **"Encumbrances"** includes:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests.
  - (s) **"Essential Term"** includes, in the case of breach by:
    - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
    - (ii) the Seller: clauses 5.1, 5.3(1)(a) – (d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;
- but nothing in this definition precludes a Court from finding other terms to be essential;
- (t) **"Exclusive Use Areas"** means parts of the common property for the Scheme allocated to the Lot under an exclusive use by-law;
  - (u) **"Financial Institution"** means a Bank, building society or credit union;
  - (v) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2013*;
  - (w) **"GST"** means the goods and services tax under the GST Act;
  - (x) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (y) **"Improvements"** means fixed structures in the Lot (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (z) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;
  - (aa) **"Land"** means the scheme land for the Scheme;
  - (bb) **"Notice of no pool safety certificate"** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land and/or the Lot;
  - (cc) **"Notice of nonconformity"** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;
  - (dd) **"Outgoings"** means:
    - (i) rates or charges on the Lot by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax; and
    - (ii) Body Corporate Levies;
  - (ee) **"Pest Inspector"** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*.
  - (ff) **"Pool Safety Certificate"** has the meaning in section 231C(a) of the *Building Act 1975*;
  - (gg) **"Pool Safety Requirements"** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
  - (hh) **"Pool Safety Inspection Date"** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
    - (i) the Inspection Date for the Building and/or Pest Inspection; or
    - (ii) 2 Business Days before the Settlement Date;
  - (ii) **"Pool Safety Inspector"** means a person authorised to give a Pool Safety Certificate;
  - (jj) **"PPSR"** means the Personal Property Securities Register established under *Personal Property Securities Act 2009* (Cth);
  - (kk) **"Property"** means:
    - (i) the Lot;
    - (ii) the right to any Exclusive Use Areas;
    - (iii) the Improvements;
    - (iv) the Included Chattels;
  - (ll) **"Regulation Module"** means the regulation module for the Scheme;
  - (mm) **"Rent"** means any periodic amount, including outgoings, payable under the Tenancies;



- (nn) **"Reserved Items"** means the Excluded Fixtures and all chattels in the Lot and Exclusive Use Areas other than the Included Chattels;
- (oo) **"Scheme"** means the community titles scheme containing the Lot;
- (pp) **"Security Interests"** means all security interests registered on the PPSR over Included Chattels and Improvements;
- (qq) **"Special Contribution"** means an amount levied by the Body Corporate under the Regulation Module for a liability for which no provision or inadequate provision has been made in the budget of the Body Corporate;
- (rr) **"Transfer Documents"** means:
  - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and
  - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (ss) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (tt) **"Withholding Law"** means Schedule 1 to the *Tax Administration Act 1953* (Cth).

1.2 Words and phrases defined in the *Body Corporate and Community Management Act 1997* have the same meaning in this contract unless the context indicates otherwise.

## 2. PURCHASE PRICE

### 2.1 GST

- (1) Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.
- (2) If a party is required to make any other payment or reimbursement under this Contract, that payment or reimbursement will be reduced by the amount of any input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled.

### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

### 2.3 Investment of Deposit

If:

- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and

(2) is lawful to do so;

the Deposit Holder must:

- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
- (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

## 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, reference to a "Bank cheque" in clause 2.5:
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.
- (3) If both the following apply:
  - (a) the market value of the Lot and Improvements at the Contract Date is \$2,000,000 or more and this sale is not otherwise an excluded transaction under s14-215 of the Withholding Law; and
  - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
    - (i) an ATO Clearance Certificate; or
    - (ii) a variation notice under s14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Deputy Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the Australian Taxation Office for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the Commissioner in accordance with s14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.5(3), the market value of the Lot and Improvements is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
  - (a) the Property includes items in addition to the Lot and Improvements; and
  - (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Lot and Improvements prepared by a registered valuer,
 in which case the market value of the Lot and Improvements will be as stated in the valuation.

## 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(17), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority or the Body Corporate advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Lot at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
  - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the interest schedule lot

entitlement of the Lot to the aggregate interest schedule lot entitlement of the Scheme; and

- (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) The seller is liable for land tax assessed on the Lot for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Lot on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.
- (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority or the Body Corporate, as appropriate. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
- (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8), 2.6(9) and 2.6(10).
- (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (12) The Seller is liable for:
  - (a) any Special Contribution for which a levy notice has been issued on or before the Contract Date; and
  - (b) any other Body Corporate Debt (including any penalty or recovery cost resulting from non-payment of a Body Corporate Debt) owing in respect of the Lot at settlement.The Buyer is liable for any Special Contribution levied after the Contract Date.
- (13) If an amount payable by the Seller under clause 2.6(12) is unpaid at the Settlement Date, the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Body Corporate.
- (14) For the purposes of clause 2.6(12), an amount payable under an exclusive use by-law will be treated as levied on the date it is due.
- (15) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.
- (16) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (17) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –
  - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
  - (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

### 3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
  - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

### 4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

#### 4.1 Building and Pest Inspection

- (1) This contract is conditional on the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- (2) The Buyer must give notice to the Seller that:
  - (a) a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (b) clause 4.1(1) has been either satisfied or waived by the Buyer.
- (3) If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- (4) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (5) The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).

#### 4.2 Pool Safety for non-shared pool on Lot

- (1) This clause 4.2 applies if:
  - (a) there is a pool on the Lot and the answer to Q2 of the Reference Schedule is No or Q2 is not completed (for a non-shared pool on the Lot); and
  - (b) this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.
- (2) This contract is conditional upon:
  - (a) the issue of a Pool Safety Certificate; or
  - (b) a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued;by the Pool Safety Inspection Date.
- (3) The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:
  - (a) the Buyer to arrange the inspection; and
  - (b) the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.
- (4) If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:
  - (a) terminates this contract; or
  - (b) waives the benefit of this clause 4.2

The Buyer must act reasonably.

- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.
- (6) The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).
- (7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.
- (8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

## 5. SETTLEMENT

### 5.1 Time and Date

- (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.
- (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) any instrument of title for the Lot required to register the transfer to the Buyer; and
  - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
  - (c) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
  - (d) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and
  - (e) if there are Tenancies:
    - (i) the Seller's copy of any Tenancy agreements;
    - (ii) a notice to each tenant advising of the sale in the form required by law; and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond; and
  - (f) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Compliance or Exemption Certificate, if not already provided to the Buyer.
- (2) If the Keys are not delivered at Settlement under clause 5.3 (1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
- (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008*) supporting the Tenancies; and
- (3) manufacturers' warranties regarding the Included Chattels;
- (4) builders' warranties on the Improvements;

to the extent that they are assignable and the Buyer accepts the assignment. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Lot and Exclusive Use Areas except for the Tenancies. Title to the Included Chattels passes at settlement.

## 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

## 6. TIME

### 6.1 Time of the Essence

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

### 6.2 Suspension of Time

- (1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster but does not apply where the inability is attributable to:
  - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Natural Disaster on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Natural Disaster, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
  - (a) that the Suspension Period has ended; and
  - (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
  - (c) that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.2:
  - (a) "Affected Party" means a party referred to in clause 6.2(1);
  - (b) "Natural Disaster" means a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
  - (c) "Settlement Obligations" means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
  - (d) "Suspension Period" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster.

## 7. MATTERS AFFECTING THE PROPERTY

### 7.1 Title

The Lot is sold subject to the *Body Corporate and Community Management Act 1997* and the by-laws of the Body Corporate.

### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances, Tenancies, statutory easements implied by part 6A of the *Land Title Act 1994* and interests registered on the common property for the Scheme.



### 7.3 Requisitions

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

### 7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract, at settlement:
  - (a) it will be the registered owner of an estate in fee simple in the Lot and will own the Improvements and Included Chattels;
  - (b) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (c) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract, at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) The Seller warrants that, except as disclosed in this contract, at the Contract Date:
  - (a) there is no unregistered lease, easement or other right capable of registration and which is required to be registered to give indefeasibility affecting the common property or Body Corporate assets;
  - (b) there is no proposal to record a new community management statement for the Scheme and it has not received a notice of a meeting of the Body Corporate to be held after the Contract Date or notice of any proposed resolution or a decision of the Body Corporate to consent to the recording of a new community management statement for the Scheme;
  - (c) all Body Corporate consents to improvements made to common property and which benefit the Lot, or the registered owner of the Lot, are in force; and
  - (d) the Additional Body Corporate Information is correct (if completed).
- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) If:
  - (a) the Seller breaches a warranty in clause 7.4(3); or
  - (b) the Additional Body Corporate Information is not completed; and, as a result, the Buyer is materially prejudiced, the Buyer may terminate this contract by notice to the Seller given within 14 days after the Contract Date but may not claim damages or compensation.
- (6) Clauses 7.4(4) and 7.4(5) do not restrict any statutory rights the Buyer may have which cannot be excluded by this contract.
- (7) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.(b) If the Seller breaches a warranty in clause 7.4(7), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given no later than 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (8) The Seller does not warrant that the Present Use is lawful.

### 7.5 Survey and Mistake

- (1) The Buyer may survey the Lot.
- (2) If there is:
  - (a) an error in the boundaries or area of the Lot;
  - (b) an encroachment by structures onto or from the Lot; or
  - (c) a mistake or omission in describing the Lot or the Seller's title to it;

which is:

- (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract; the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
  - (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

### 7.6 Requirements of Authorities

- (1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("**Work or Expenditure**") must be fully complied with:
  - (a) if issued before the Contract Date, by the Seller before the Settlement Date;
  - (b) if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under section 246AG of the *Building Act 1975* that affects the Property. The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the *Building Act 1975* or sections 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property or Land.
- (5) Clause 7.6(1) does not apply to orders disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
  - (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access or any service to the Land passes unlawfully through other land;
  - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (e) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (f) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*; or
  - (g) there is a charge against the Lot under s104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to:
  - (a) inspect records held by any authority, including Security Interests on the PPSR, relating to the Property or the Land; and
  - (b) apply for a certificate of currency of the Body Corporate's insurance from any insurer.

### 7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute

to the cost of building any dividing fence between the Lot and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## **8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT**

### **8.1 Risk**

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### **8.2 Access**

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

### **8.3 Seller's Obligations After Contract Date**

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.

### **8.4 Body Corporate Meetings**

- (1) The Seller must promptly give the Buyer a copy of:
  - (a) any notice it receives of a proposed meeting of the Body Corporate to be held after the Contract Date; and
  - (b) resolutions passed at that meeting and prior to settlement.
- (2) The Buyer may terminate this contract by notice in writing to the Seller given before settlement if it is materially prejudiced by:
  - (a) any resolution of the Body Corporate passed after the Contract Date, other than a resolution, details of which are disclosed to the Buyer in this contract; or
  - (b) where the Scheme is a subsidiary scheme, any resolution of a body corporate of a higher scheme.
- (3) In clause 8.4(2) a resolution includes a decision of the Body Corporate Committee to consent to recording a new community management statement.
- (4) If the Buyer is not given a copy of the resolutions before settlement, it may sue the Seller for damages.

### **8.5 Information Regarding the Property**

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR.

### **8.6 Possession Before Settlement**

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of landlord and tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

### **8.7 Seller's Obligations After Contract Date**

- (1) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.

- (2) After the Contract Date, the Seller must not without the prior written consent of the Buyer, give any notice, seek or consent to any order or make an agreement that affects the Property.

## **9. PARTIES' DEFAULT**

### **9.1 Seller and Buyer May Affirm or Terminate**

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

### **9.2 If Seller Affirms**

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

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

### **9.3 If Buyer Affirms**

If the buyer affirms this contract under clause 9.1, it may sue the Seller for:

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

### **9.4 If Seller Terminates**

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

### **9.5 If Buyer Terminates**

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

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

### **9.6 Seller's Resale**

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;provided the resale settles within 2 years of termination of this contract.
- (2) Any profit on a resale belongs to the Seller.

### **9.7 Seller's Damages**

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

### **9.8 Buyer's Damages**

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

### **9.9 Interest on Late Payments**

- (1) The Buyer must pay interest at the Default Rate:
  - (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
  - (a) under clause 9.9(1)(a), from the date it is due until paid; and
  - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

## 10. GENERAL

### 10.1 Seller's Agent

The Seller's Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices may be given by:
  - (a) delivering or posting to the other party or its solicitor; or
  - (b) sending to the facsimile number or email address of the other party or its solicitor stated in the Reference Schedule or another facsimile number or email address specified in a notice given by the recipient to the sender.

**[Note: Whilst notices under this Contract may be sent by email they are not 'given' until they are capable of being retrieved by the addressee at the nominated email address in accordance with s 24 of the Electronic Transactions (Queensland) Act 2001]**

- (3) Posted notices will be treated as given 3 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

### 10.5 Business Days

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

### 10.6 Rights After Settlement

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

### 10.7 Further Acts

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

### 10.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

### 10.9 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

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

## 11. Electronic Settlement

### 11.1 Application of Clause

- (1) Clause 11 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement and overrides any other provision of this contract to the extent of any inconsistency.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 11.1(1).
- (3) Clause 11 (except clause 11.5(2)) ceases to apply if either party gives notice under clause 11.5 that settlement will not be an Electronic Settlement.

### 11.2 Completion of Electronic Workspace

- (1) The parties must:
  - (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (b) do everything else required in the Electronic Workspace to enable settlement to occur on the Settlement Date.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (3) If any part of the Purchase Price is to be paid to discharge an Outgoing:
  - (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (4) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
  - (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 11.2(4)(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 11.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1) and 2.5(3)(f).
- (3) The Seller and Buyer will be taken to have complied with clause 2.5(3) (if applicable) if:
  - (a) the Buyer complies with clause 2.5(3)(d);
  - (b) the Financial Settlement Schedule specifies payment of the CGT Withholding Amount to the account nominated by the Deputy Commissioner for Taxation.
- (4) The Seller will be taken to have complied with clauses 5.3(1)(b) and (c) if, at settlement, the Electronic Workspace contains Transfer Documents and (if applicable) releases of the Encumbrances (other than releases of Encumbrances referred to in clause 11.3(4)) for Electronic Lodgement in the Land Registry.

- (5) The Seller will be taken to have complied with clause 5.3(1)(c), (d), (e) and (f) if the Seller's Solicitor:
  - (a) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
  - (b) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
  - (c) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (6) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (7) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

#### 11.4 Computer System Unavailable

- (1) If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or PEXA is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.
- (2) A party is not required to settle if Electronic Lodgement is not available. If the parties agree to Financial Settlement without Electronic Lodgement, settlement is deemed to occur at the time of Financial Settlement.

#### 11.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 11.5(1) may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
  - (a) the transaction is not a Qualifying Conveyancing Transaction; or
  - (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to PEXA; or
  - (c) the Buyer's or Seller's Financial Institution is unable to settle using PEXA.
- (3) If clause 11.5(2) applies:
  - (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
  - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

#### 11.6 Costs

Each party must pay its own fees and charges of using PEXA for Electronic Settlement.

#### 11.7 Definitions for clause 11

In clause 11:

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

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

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

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

**Electronic Settlement** means settlement facilitated by PEXA.

**Electronic Workspace** means a shared electronic workspace within PEXA that allows the Buyer and Seller to affect Electronic Lodgement and Financial Settlement.

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

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

**PEXA** means the system operated by Property Exchange Australia Ltd for settlement of conveyancing transactions and lodgement of Land Registry documents.

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

## ANNEXURE "A" SPECIAL CONDITIONS

### 1. DEFINITIONS

1.1 In this Contract, the following definitions will apply:

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

**Claim** means a claim, action, proceeding, damage, cost, loss, expense or liability however arising whether present, unascertained, immediate, future or contingent;

**Contract** means the REIQ Contract for Residential Lots in a Community Titles Scheme (9<sup>th</sup> Edition), Reference Schedule, Standard Conditions and annexures;

**Disclosure Statement** means the statement under section 206 of the Act;

**DNRM** means the Department of Natural Resources and Mines;

**GST** means any money payable pursuant to the GST Act;

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

**Guarantee** means the guarantee and indemnity annexed to this Contract as Annexure 'B';

**Land** has the same meaning as the Land described in the Contract.

**Local Authority** means the local government having jurisdiction over the Land;

**Original Owner** has the meaning given to it in the Act;

**Special Conditions** means these conditions and annexures;

**Standard Conditions** means the printed REIQ Terms of the Contract for Residential Lots in a Community Titles Scheme (9<sup>th</sup> Edition) forming part of this Contract.

### 2. VARIATIONS TO STANDARD CONDITIONS

(a) In the event of any inconsistency between these Special Conditions and the Standard Conditions, the terms of these Special Conditions prevail.

(b) The definition of "Outgoings" in Standard Condition 1.1(2)(dd) is deleted and replaced with:

*"Outgoings" means:*

- (i) *rates or charges on the Lot by any competent authority (for example council rates, water rates, fire service levies) and includes land tax;*
  - (ii) *Body Corporate Levies; and*
  - (iii) *insurance premiums payable by the Seller as original owner under the Body Corporate and Community Management Act 1997 (Qld).*
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- (c) The definition of "Essential Term" in Standard Condition 1.1(2)(s) is amended to include, for the Buyer, Special Conditions 20 (Buyer as Trustee) and 21 (Buyer Warranties) and Special Condition 8 (Power of Attorney).
- (d) The definition of "Encumbrances" at clause 1.1(2)(r) is amended to delete subclause (r)(iii). Notwithstanding any other condition of the Contract, the Seller is not required to provide any undertaking or release under the Personal Property Securities Register at Settlement and provision of a release of any mortgage will be deemed satisfactory evidence provided to the Buyer that they are receiving full and free title to the Lot.

### **3. BUYER ACKNOWLEDGMENTS**

- 3.1 The Buyer acknowledges that prior to executing this Contract they have received from the Seller and/or the Seller's Agent:
  - (a) a section 206 Disclosure Statement complying with the provisions of the Act; and
  - (b) all statements, directions, warnings and forms required by the *Property Occupations Act 2014* (Qld).
- 3.2 The Buyer is deemed to have read the Disclosure Statement and this Contract before it signed the Contract and any information disclosed in the Disclosure Statement and this Contract is deemed to be disclosed to the Buyer before the Buyer enters into this Contract.

### **4. SETTLEMENT**

- 4.1 Settlement shall be effected on the Settlement Date at a venue in Brisbane to be nominated by the Seller's Solicitors between the hours of 9am and 4pm.
- 4.2 The Seller shall provide:
  - (a) vacant possession of the Lot;
  - (b) the Transfer Documents for the Lot signed by the Seller;
  - (c) any instrument of title to the Lot; and
  - (d) a duly executed release of any of any mortgage of the Lot.

### **5. ADJUSTMENTS**

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

## **6. DEFAULT**

- 6.1 The Buyer has no right to terminate this Contract in the event of the Seller:
- (a) being ordered to be wound up or being placed into provisional liquidation;
  - (b) entering into a scheme of arrangement for the benefit of creditors;
  - (c) resolving to go into liquidation; or
  - (d) being put into the control of an administrator, a liquidator, receiver and/ or manager or an agent of a mortgagee.

## **7. APPOINTMENT OF PROXY**

- 7.1 The Buyer appoints the Seller (including a nominee of the Seller) as the proxy of the Buyer to vote at a general meeting of the Body Corporate on the following matters:
- (a) the engagement of a person as a Body Corporate Manager or service contractor or authorising a person as a letting agent if the details of the engagement or authorisation were disclosed to the Buyer before the Buyer entered into this Contract;
  - (b) authorising a service contractor or letting agent to use a part of the Common Property;
  - (c) consenting to the recording of a new Community Management Statement to include any new By-Law reasonably required by the Seller;
  - (d) all matters raised in the Power of Attorney contained at Special Condition 8; and
  - (e) consenting to the recording of a new Community Management Statement to include details not inconsistent with the matters contained in this Contract

this proxy is irrevocable for a period of one (1) year after it is given.

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- 7.2 The Buyer agrees to ratify and confirm any action taken by the Seller to vote at meetings of the Body Corporate using this proxy.
- 7.3 While this proxy remains in force the Buyer must not transfer or assign the Lot other than to a transferee or assignee who has first agreed to be bound by the provisions of this Special Condition and who has executed a proxy in favour of the Seller in the same terms as this Special Condition.
- 7.4 The Buyer will not grant a mortgage of the Lot without first providing a copy of this Contract to the mortgagee and procuring the mortgagees agreement to be bound by the provisions of this Special Condition.
- 7.5 The Buyer must provide a signed and completed BCCMA Form 6 contained at Annexure "C" to the Seller at settlement.
- 7.6 This Special Condition 7 is an Essential Term of the contract.

## **8. POWER OF ATTORNEY**

- 8.1 The Buyer irrevocably appoints the Seller and the directors of the Seller jointly and severally as the attorneys of the Buyer to perform, to the exclusion of the Buyer, the following acts:
- (a) attend and/or vote in the name of the Buyer at meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to below;
  - (b) complete, sign and lodge a voting paper or other document (including a corporate owner nominee appointment form or representative appointment form and any notice under the Regulation Module) to allow the Seller to vote in the name of the Buyer at all meetings of the Body Corporate or the committee of the Body Corporate in place of the Buyer in respect of a motion or resolution referred to below; or
  - (c) complete, sign and lodge any written consent pursuant to the Act as may be required to pass any exclusive use by laws to allocate exclusive use areas in the Scheme, consequent upon the establishment of a new Scheme.
- 8.2 The motions or resolutions in respect of which the Seller is appointed the attorney of the Buyer to the exclusion of the Buyer are the following:
- (a) consent to the recording of a new Community Management Statement to facilitate the progressive development of the Scheme and the Land identified in this Contract and all alterations, modifications or adjustments (including adjustment of the contribution schedule lot entitlements and the interest schedule lot entitlements and the creation of additional Common Property) which are necessary for the Seller to develop the Land;
  - (b) the re subdivision of any lot owned by the Seller in the Scheme to create additional lots and Common Property;
  - (c) consent to the recording of a new Community Management Statement to implement the development of the Scheme and the Land proposed by this Contract or the Community Management Statement currently in force;
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- (d) consent to the recording of a new Community Management Statement to record allocations under any exclusive use bylaw or to record any additional or replacement exclusive use bylaw to allocate exclusive use areas in the Scheme;
  - (e) consent to the affixing of the seal of the body corporate to all forms required to be lodged in the DNRM;
  - (f) consent to the grant of any easement, lease, licence or occupation authority referred to in this Contract;
  - (g) consent to any appeal to any Court deemed appropriate by the Body Corporate;
  - (h) the engagement of a person as a Body Corporate manager or service contractor, or authorising a person as a letting agent including the engagement of the Body Corporate manager and the engagement and the authorisation of a manager as disclosed in this Contract;
  - (i) the fixing, adoption, variation or ratification of budgets or contributions to be levied by the Body Corporate;
  - (j) the composition and/or election of the members of the committee of the Body Corporate;
  - (k) a proposal that there shall be no prohibition or restriction on the use of proxies by the original owner;
  - (l) an application to be made for an order of an adjudicator under the Act;
  - (m) any appeals to be lodged pursuant to the Act;
  - (n) the commencement of a proceeding pursuant to the Act;
  - (o) the issue of an authorisation to the owner of a lot (including the original owner) to make any improvement contemplated under the Regulation Module including the installation, erection and /or construction of air conditioning equipment, enclosing of carports, construction and installation of storage areas, pergolas, fencing, screening, shutters, security devices or any other associated apparatus and awnings;
  - (p) the exercise of any right of the Seller under this Contract;
  - (q) any acts or things required of the Body Corporate;
  - (r) to elect or appoint Committee Members and Body Corporate Representatives to any Principal Body Corporate;
  - (s) the amalgamation or subdivision of any lot owned by the Seller;
  - (t) consent to the recording of a Building Management Statement (if any);
  - (u) to do any and all things necessary to effect any future stage of the development;
  - (v) to execute any agreement contained in the Disclosure Statement for the Body Corporate;
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- (w) to vote on behalf of the Buyer at all meetings of the Body Corporate and the Committee of the Body Corporate to the maximum extent permissible by law;
- (x) for all purposes of and incidental to those matters outlined above.

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

8.4 While this Power of Attorney remains in force, the Buyer must not transfer or assign the Lot other than to a transferee or assignee who has first agreed to be bound by the provisions of this Special Condition and who has executed a Power of Attorney in favour of the Seller and its directors in the same terms as this Special Condition.

8.5 The Buyer will not grant a mortgage of the Lot without first providing a copy of this Contract to its mortgagee and procuring the mortgagees agreement to be bound by the provisions of this Special Condition.

8.6 If for any reason the Seller is unable to exercise the rights granted to it by this Special Condition the Buyer must exercise its rights to vote as the Seller directs but only in relation to the matters set out above.

8.7 As far as it is lawful, the rights of the Seller under this Special Condition can be exercised in the Seller's total discretion and to exclusion of the Buyer without limitation, the rights of the Seller under this Special Condition can be exercised:-

- (a) even if the exercise involves a conflict of interest or duty; or
- (b) even if the attorney has a personal interest in doing so.

8.8 This Power of Attorney is given pursuant to section 10 of the *Powers of Attorney Act 1988* (Qld) and is given by the Buyer as security for the proprietary interest of the Seller and the performance of its obligations to the Seller and is irrevocable.

8.9 The Power of Attorney expires 1 year after it is given in accordance with section 211 of the Act.

8.10 This Special Condition 8 operates as a Deed and is an Essential Term of the Contract.

## **9. SELLER TERMINATION**

9.1 The Seller may terminate this Contract at any time, by written notice to the Buyer if:

- (a) being a company, the Buyer:
    - (i) is ordered to be wound up or is placed into provisional liquidation;
    - (ii) enters into a scheme of arrangement for the benefit of creditors;
    - (iii) resolves to go into liquidation; or
    - (iv) is put into the control of an administrator, a liquidator, receiver and/ or manager or an agent of a mortgagee.
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- (b) the Buyer, being an individual:
  - (i) dies;
  - (ii) becomes bankrupt;
  - (iii) is sentenced to imprisonment for a term exceeding 1 month; or
  - (iv) is found unable to manage their affairs by reason of unsoundness of mind;
- (c) the Guarantors fail to give the guarantees required by this Contract.

9.2 If this Contract is terminated under this Special Condition then the Deposit Holder must refund the Deposit to the Buyer and this Contract shall be at an end and neither party shall have any Claim against the other save for any antecedent breach.

## **10. RIGHTS AFTER SETTLEMENT**

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

## **11. SALE OF OTHER LOTS**

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

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

12.1 The Seller shall have the right at any time prior to the Settlement Date to transfer or assign its interest in the Land or the Lot or this Contract provided that it does not cause detriment to the Buyer (acting reasonably) and upon receipt by the Buyer of notice of such transfer or assignment the Buyer acknowledges and agrees that the terms and conditions hereunder shall remain binding upon the Buyer and the Guarantors and shall be enforceable against the Buyer and the Guarantors by the assignee or transferee of the Seller's interest as if the assignee or transferee were the Seller named herein.

## **13. DIRECTOR'S GUARANTEES**

13.1 In the event that the Buyer is a company or trustee, this Contract shall not be deemed to be final and binding upon the Seller and shall be voidable at the option of the Seller unless and until the form of Guarantee contained in Annexure 'B' has been executed as a deed by the directors and principal shareholders of the Buyer or trustee, but notwithstanding that such Guarantee has not been executed this Contract shall be final and binding upon the Buyer. This clause has been inserted for the sole benefit of the Seller.

13.2 In the case where the original Buyer hereunder is the trustee of a trust the Purchaser shall disclose the fact to the Seller prior to the execution of this Contract by the Seller and shall also provide the Seller with any other information which the Seller may require relating to the

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financial standing of the trust and in the absence of any such disclosure the Buyer shall be deemed to have purchased the property both in its own right and for the trust.

#### **14. CAVEATS**

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

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

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

#### **16. EXCLUSIVE USES**

- 16.1 Subject to this Special Condition, the Seller may at any time up to and including the date of termination of the Power of Attorney provided herein, cause the Body Corporate to grant rights of exclusive use to the owner for the time being of other lots in respect of any part of the Common Property, including areas for car spaces and courtyards, as well as occupation authorities and special rights and any moneys paid to the Seller shall belong to the Seller.
- 16.2 The Seller as Original Owner may allocate exclusive use of any car parking space or courtyard area to the owner for the time being of the Lot and shall make such allocation within 12 months after the recording of the Community Management Statement and give details of the allocation to the Body Corporate. For the purposes of the Act, the Buyer agrees to the allocation made (if any).

#### **17. GST**

- 17.1 The Purchase Price is inclusive of GST (if any).
- 17.2 The Seller and the Buyer agree that the Seller shall apply the Margin Scheme as defined in Division 75 of the GST Act for any supply provided by this Contract.
- 17.3 The Buyer acknowledges that the Seller does not warrant that the margin scheme can be applied and to the extent that the Seller cannot supply the margin scheme, the Buyer cannot object or make any Claim.

#### **18. FINANCE**

- 18.1 If this Contract is subject to the Buyer obtaining finance approval, the Buyer shall take all steps reasonably necessary to obtain such approval and shall provide copies of all documents relating to any applications and the financier's response forthwith to the Seller if requested.

#### **19. DIVIDING FENCES**

- 19.1 The Seller is not liable to contribute to the construction of a dividing fence between the Land and any adjoining land.
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## **20. BUYER AS TRUSTEE**

20.1 If the Buyer is a trustee (whether or not disclosed in this Contract) the Buyer is bound under this Contract both personally and in its capacity as trustee.

20.2 The Buyer warrants to the Seller that:

- (a) it is the sole trustee under the relevant trust;
- (b) it will disclose fully to the Seller the terms of the trust on request;
- (c) it possesses unqualified power under the trust to enter into this Contract to complete the purchase of the Land;
- (d) any consent, approval or resolution necessary to enable it to enter and discharge its obligations under this Contract have been obtained or passed;
- (e) it holds its interest under this Contract:
  - (i) in the proper exercise of its power under the trust; and
  - (ii) for the benefit of the beneficiaries or objects of the trust;
- (f) nothing referred to in Special Condition 20.3 occurred prior to it entering into this Contract except as disclosed in writing to the Seller.

20.3 The Buyer must ensure that between the:

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

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

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

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

## **21. BUYER WARRANTIES**

21.1 The Buyer represents and warrants that:

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

21.2 The Buyer agrees that information in brochures, models or other material of any description in connection with the sale of the Lot are indicative only and are not to be relied on or if relied on, the Buyer acknowledges that it elects to do so at its own risk and with full understanding that the

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Lot and Scheme may vary from the information in those items as represented in any of them, in accordance with the terms of this Contract. Where there is any inconsistency between plans, the sizes, dimensions and measurements on the draft survey plan contained in the Disclosure Statement (as amended from time to time) prevails.

- 21.3 The Buyer acknowledges and agrees that it has had the opportunity, prior to signing this Contract, to obtain an independent valuation in relation to the Lot and that no representations or warranties about the likely value of the lot at completion has been made by the Seller, a consultant of the Seller, an agent of the Seller.
- 21.4 The Buyer acknowledges and agrees that it had the opportunity to investigate the Land and the financial viability and/or performance of any investment in the Lot prior to signing this Contract and during the statutory 5 day cooling off period.

## **22. ENTIRE AGREEMENT**

- 22.1 This Contract:
- (a) contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Contract; and
  - (b) supercedes any prior agreement or understanding on anything connected with that subject matter.
- 22.2 Each party has entered into this Contract without relying on any representation by any other party or any person purporting to represent that party, save those representations which are expressly contained in this Contract and the Disclosure Statement.
- 22.3 The Buyer confirms and acknowledges that it has obtained its own independent financial and accounting advice in relation to the purchase of the Lot and in relation to the effects of any Goods and Services Tax that may be applicable.
- 22.4 No warranties are given by the Seller or its agents as to the value of the Lot at Settlement or as to the Buyer's ability to sell the Lot before the Settlement Date.

## **23. DUTIES AND COSTS**

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

## **24. NO MERGER**

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

## **25. NO WAIVER**

- 25.1 No delay or omission to exercise any right accruing to the Seller will be deemed a waiver of any continuing breach by the Buyer or a waiver of any future similar breach. To be effective any waiver by the Seller must be in writing and shall only be effective to the extent specified.
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## **26. SELLER AS TRUSTEE**

- 26.1 This clause only applies where the Seller is a Trustee.
- 26.2 The Seller enters into this Contract only in its capacity as trustee of the trust and in no other capacity. A liability arising under or in connection with this Contract can be enforced against the Seller only to the extent to which it can be satisfied out of property of the trust of which the Seller is actually indemnified for the liability. This limitation of the Seller's liability applies despite any other provision of this Contract and extends to all liabilities and obligations of the Seller in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Contract.
- 26.3 The parties other than the Seller may not sue the Seller personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Seller or prove in any liquidation, administration or arrangement of or effecting the Seller.
- 26.4 The provisions of this clause shall not apply to any obligation or liability of the Seller to the extent that it is not satisfied because under the trust deed establishing the trust or by operation of law, there is a reduction in the extent of the Seller's indemnification out of the assets of the trust, as a result of the Seller's fraud, negligence or breach of trust.

## **27. TERMS AND INCONSISTENCY**

- 27.1 In the event of any inconsistency between these Special Conditions and the Standard Terms of Contract, the terms of these Special Conditions prevail.
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**ANNEXURE "B"**  
**GUARANTEE**

In consideration of the Seller entering into a contract of sale with the Buyer for the Property I/we:

Name	
Address	

and

Name	
Address	

**("the Guarantors")**

provide this Guarantee to the Seller on the following terms:

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

**This Guarantee is dated the \_\_\_\_ day of \_\_\_\_\_ 201\_\_.**

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

]  
]  
]  
]

A witness

Full name of witness

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

]  
]  
]  
]

A witness

Full name of witness

**ANNEXURE “C”  
BCCMA FORM 6**

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## Proxy form for body corporate general meetings

Body Corporate and Community Management Act 1997

This form is effective from 29 August 2011

### Section 1—Body corporate secretary details

Name .....

Address of scheme .....

Suburb ..... State  Postcode

### Section 2—Authorisation

The Regulations set out a number of restrictions on the use of proxies, including an ability for the body corporate to further restrict their use including prohibition.

**Note:**

If there is insufficient space please attach separate sheets.

Name of owner 1 .....

Signature ..... Dated:

/  /   
D D M M Y Y Y Y

Name of owner 2 .....

Signature ..... Dated:

/  /   
D D M M Y Y Y Y

Lot number/s ..... Plan number.....

Name of scheme .....

CMS number .....

Appoint (full name) .....

as my/our proxy to vote on my/our behalf (including adjournments) at

(please tick **one**)

☐ The general meeting to be held on  /  /   
D D M M Y Y Y Y

☐ All general meetings held before  /  /   
D D M M Y Y Y Y

☐ All general meetings held during the rest of the body corporate's financial year unless I/we serve you with a prior written withdrawal of the appointment.

Signature of proxy holder ..... Dated:  /  /   
D D M M Y Y Y Y

Residential address .....

Suburb ..... State  Postcode

Postal address .....

Suburb ..... State  Postcode