



12 April 2019

# Contract of Sale

Stage 1 (land only), 46 – 50 Bayview Road, Officer

Lot No.:

**on proposed Plan of  
Subdivision PS826731D**

#### **Important notices to Purchasers of 'Off the Plan' Properties**

- The Purchaser may negotiate with the Vendor about the amount of the deposit moneys payable under the contract, up to 10 per cent of the purchase price.
- A substantial period of time may elapse between the day on which the Purchaser signs the contract of sale and the day on which the Purchaser becomes the registered proprietor of the lot.
- The value of the lot may change between the day on which the Purchaser signs the contract for the sale of that lot and the day on which the Purchaser becomes the registered proprietor.

**CONTRACT OF SALE OF REAL ESTATE – PARTICULARS OF SALE**

**Property address:** See Particulars of Sale

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the—

- Particulars of sale; and
- Special conditions, if any; and
- General conditions; and
- Vendor’s Statement

and in that order of priority.

The Vendor’s Statement required by section 32(1) of the **Sale of Land Act 1962** is attached to and forms part of the terms of this contract.

**IMPORTANT NOTICE TO PURCHASERS**

**Cooling-off period** (Section 31 of the *Sale of Land Act 1962*)

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor’s agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor’s agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

**EXCEPTIONS:** the 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days **before or after** a publicly advertised auction; or
- the property is used primarily for industrial or commercial purposes;
- the property is more than 20 hectares in size and is used primarily for farming;
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

**SIGNING OF THIS CONTRACT**

**WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT**

Purchasers should ensure that prior to signing this contract, they have received a copy of the full terms of this contract.

The authority of a person signing—

- under power of attorney; or
- as director of a corporation; or
- as an agent authorised in writing by one of the parties

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.

**SIGNED BY THE PURCHASER**

*See execution page*

on \_\_\_\_\_ / \_\_\_\_\_ /20

print name of person signing

state nature of authority if applicable (e.g. ‘director’, ‘attorney under power of attorney’)

This offer will lapse unless accepted within [ \_\_\_\_\_ ] clear business days (3 business days if none specified).

**SIGNED BY THE VENDOR**

*See execution page*

on \_\_\_\_\_ / \_\_\_\_\_ /20

print name of person signing

state nature of authority if applicable (e.g. ‘director’, ‘attorney under power of attorney’)

The **DAY OF SALE** is the date by which both parties have signed this contract.

## Particulars of Sale

**Seller's Estate  
Agent**

Core Projects of 182 Coventry Street, South Melbourne VIC 3205	ACN
E-mail: <a href="mailto:nhay@coreprojects.com.au">nhay@coreprojects.com.au</a>	Phone: 1300 135 819 Fax:
E-mail: <a href="mailto:lcraven@coreprojects.com.au">lcraven@coreprojects.com.au</a>	Ref:

**Seller's Solicitor**

<b>Corrs Chambers Westgarth</b> of Level 25, 567 Collins Street, Melbourne, Victoria 3000	ABN 89 690 832 091
E-mail: <a href="mailto:katherine.hogan@corrs.com.au">katherine.hogan@corrs.com.au</a>	Phone: (03) 9672 3348 Fax: (03) 9672 3010
	Ref: DE/KH 9143456

**Buyer's Solicitor**

	ABN
of	
E-mail:	Phone: Fax:
	Ref:

**Seller**

AVID Property Group Nominees Pty Ltd as trustee for Officer Property Unit Trust ABN 52 475 844 301 of Level 35, 259 George Street Sydney NSW 2000	ACN 088 212 631
---	-----------------

**Buyer**

	ABN
of	
E-mail:	Phone: Mobile:
	Ref: Fax:

**Buyer ID**

Drivers Licence <input type="checkbox"/>	Passport <input type="checkbox"/>	Other <input type="checkbox"/> .....
--	-----------------------------------	--------------------------------------

**Buyer's FIRB  
Declaration**

Are you a Foreign Person for the purposes of the FATA Act?	
<input type="checkbox"/> Yes	<input type="checkbox"/> No

**Land**

Lot \_\_\_\_\_ on proposed plan of subdivision no. PS826731D being part of the land in certificates of titles volume 8314 folio 112, volume 9542 folio 679 and volume 9535 folio 202 being part of Stage 1, 46 – 50 Bayview Road, Officer, Victoria

**Goods**

Nil

**Price**

\$

**Deposit  
(10% of Price)**

\$  
  
The Purchaser has paid \$\_\_\_\_\_. The balance of the Deposit is payable within \_\_\_\_\_ days of the Day of Sale.

**Balance**

\$

**GST**

The Price includes GST (if any) unless the words 'plus GST' appear in this box:  
-----  
  
If this is a sale of a 'farming business' or 'going concern' then add the words 'farming business' or 'going concern' in this box:  
-----  
  
If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box:  
Margin Scheme

**Deposit**

The Buyer will pay the Deposit by cheque or EFT.

**Settlement Due Date**

(a) If at the Contract Date there is not a Title, the later of:  
(i) the date specified as the settlement date in the Settlement Notice being **14 days** after the date the Settlement Notice is given to the Buyer; and  
(ii) the date that is **35 days** after the Contract Date; or  
(b) If at the Contract Date there is a Title, the date that is **35 days** after the Contract Date.

**Special  
Conditions**

This Contract does not include any special conditions unless the words '**special conditions**' appear in this box:

**special conditions**

**Contract Date**

The date on which both parties have signed this Contract

# IMPORTANT NOTICE – PAYMENT OF THE DEPOSIT

The Deposit must be paid in Australian dollars to:

**Account Name: Corrs Chambers Westgarth Trust Account**

**Bank: Westpac Banking Corporation**

**BSB: 033-340**

**Account Number: 27-1035**

**Reference: [insert Lot] S1 OFF**

**For Deposits made outside Australia, the Westpac Bank Swift code is WPACAU2S**

## **Cash Deposits:**

1. All Deposits (\$AUD only) are to be remitted to the Seller's Solicitor to be held in accordance with the Sale of Land Act.
2. All deposit transfers must include the reference "[insert lot] S1 OFF" and a copy of the bank receipt must be emailed to evelyn.chard@corrs.com.au
3. Cheque/s must be made payable to "Corrs Chambers Westgarth Trust Account".
4. Tax File Number of the Purchaser/s must be provided to avoid withholding tax being deducted.

## **Bank Guarantees:**

1. If the Seller accepts a Bank Guarantee, it must be delivered to the Seller's Solicitor to be held in accordance with the Sale of Land Act.
2. The Bank Guarantee must be an unconditional and irrevocable guarantee or undertaking by an Australian trading bank with a branch in Melbourne to pay money to the Seller's Solicitor:
  - a. without reference to the Purchaser
  - b. with an expiry date (if any) at least 30 days after the Sunset Date;
  - c. describe the purpose as "The deposit (or part thereof) for the purchase of Lot [insert] on plan of subdivision no. PS826731D Stage No. 1 being part of the land comprised in certificates of titles volume 8314 folio 112, volume 9542 folio 679 and volume 9535 folio 202"; and
  - d. in a form satisfactory to the Seller including that the Bank Guarantee must be made in favour of "The Partners of the firm trading as Corrs Chambers Westgarth".
3. If the Seller's Solicitor does not approve the form of the Bank Guarantee, you will be required to provide a replacement Bank Guarantee at your own cost. The original Bank Guarantee will not be returned until the replacement Bank Guarantee is provided.

Due to trust accounting regulations, the Seller's Solicitor is unable to issue trust receipts until the above information / documents are provided.

# Signing page

Signed by the Seller on \_\_\_\_\_ 2019

**Executed** on behalf of AVID Property Group Nominees Pty Ltd by its attorneys under a Power of Attorney dated 17 August 2016 who declare that they have not received any notice of the revocation of that Power of Attorney in the presence of

\_\_\_\_\_  
Signature of Witness ←

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Signature of Attorney ←

\_\_\_\_\_  
Name of Attorney (print)

\_\_\_\_\_  
Signature of Attorney ←

\_\_\_\_\_  
Name of Attorney (print)

**Executed** on behalf of AVID Property Group Nominees Pty Ltd by its attorney under a Power of Attorney dated 11 March 2019 who declares that he/she has not received any notice of the revocation of that Power of Attorney in the presence of

\_\_\_\_\_  
Signature of Witness ←

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Signature of Attorney ←

\_\_\_\_\_  
Name of Attorney (print)

Signed by the Buyer on \_\_\_\_\_ 2019  
Execution by the Buyer – if an individual(s)

Executed by the Buyer )  
 )  
in the presence of: )  
 )

x [Redacted]

x [Redacted]

.....  
Witness

.....  
Signature of Purchaser

[Redacted]

.....  
Name of Witness (print)

Executed by the Buyer )  
 )  
in the presence of: )  
 )

x [Redacted]

x [Redacted]

.....  
Witness

.....  
Signature of Purchaser

[Redacted]

.....  
Name of Witness (print)



**Execution by the Buyer – if a company with more than one director**

**Executed by the Buyer** )  
 )  
 in accordance with section 127(1) of the )  
*Corporations Act 2001 (Cth)* )  
 )

**x** [Redacted Signature]

**x** [Redacted Signature]

.....  
 Company Secretary/Director

.....  
 Director

[Redacted Name]

[Redacted Name]

.....  
 Name of Company Secretary/Director  
 (print)

.....  
 Name of Director (print)

**Execution by the Buyer – if a company with a sole director and sole company secretary**

**Executed by the Buyer** )  
 )  
 in accordance with section 127(1) of the )  
*Corporations Act 2001 (Cth)* )  
 )

**x** [Redacted Signature]

.....  
 Sole Director and Sole Company  
 Secretary

[Redacted Name]

.....  
 Name of Sole Director and Sole  
 Company Secretary (print)

**Execution by the Buyer – pursuant to an unregistered power of attorney**

**Signed by the Buyer** )  
by the party's attorney pursuant to a )  
power of attorney dated )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

[Redacted]

who states that he or she has received  
no notice of the revocation of the power  
of attorney in the presence of:

x [Redacted]

x [Redacted]

.....  
Witness

.....  
Signature of Attorney

[Redacted]

[Redacted]

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

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# Annexure A

## General Conditions

## CONTRACT OF SALE OF REAL ESTATE – GENERAL CONDITIONS

### TITLE

#### 1. Encumbrances

- 1.1 The purchaser buys the property subject to:
- (a) ~~any encumbrance shown in the section 32 statement other than mortgages or caveats~~ the Title Encumbrances; and
  - (b) any reservations, exceptions, conditions and restrictions (if any) in the crown grant; ~~and~~
  - (c) any lease referred to in the particulars of sale;
  - (d) the provisions of any agreement which the Seller may be required to enter into with any Authority in relation to the Plan including but not limited to an agreement under Section 173 of the Planning and Environment Act 1987 (Vic);
  - (e) the requirements of any planning permit or approval affecting the Property; and
  - (f) the Additional Restrictions.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.
- 1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.

#### 2. Vendor warranties

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the **Estate Agents Act 1980** save for any amendments to these general conditions with deletions struck-through and additions underlined.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
- (a) ~~has, or by the due date for settlement will have, the right to sell the land.~~ will at Settlement be the holder of an unencumbered estate in fee simple in the Property, subject to those encumbrances and interests described in General Condition 1.1 and otherwise disclosed in the Special Conditions; and

- (b) is under no legal disability that would prevent it from complying with its obligations under this contract; and
- ~~(e) is in possession of the land, either personally or through a tenant; and~~
- ~~(d)~~(c) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
- ~~(e)~~(d) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
- ~~(f)~~(e) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
- (a) public rights of way over the land;
  - (b) easements over the land;
  - (c) lease or other possessory agreement affecting the land;
  - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices; or
  - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the **Sale of Land Act 1962** in accordance with Division 2 of Part II of that Act.
- 2.6 If sections 137B and 137C of the **Building Act 1993** apply to this contract, the vendor warrants that:
- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
  - (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made under the **Building Act 1993**.



2.7 Words and phrases used in general 2.6 which are defined in the **Building Act 1993** have the same meaning in general condition 2.6.

### 3. Identity of the land

3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.

~~3.2 The purchaser may not:~~

- ~~(a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or~~
- ~~(b) require the vendor to amend title or pay any cost of amending title.~~

### 4. Services

4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.

4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

### 5. Not used. Consents

~~The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.~~

### 6. Transfer

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

### 7. Not used. Release of security interest

~~7.1 This general condition applies if any part of the property is subject to a security interest to which the Personal Property Securities Act 2009 (Cth) applies.~~

~~7.2 For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interest affecting any personal property for which the purchaser may be entitled to a release,~~

~~statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.~~

~~7.3 If the purchaser is given the details of the vendor's date of birth under general condition 7.2, the purchaser must—~~

- ~~(a) only use the vendor's date of birth for the purposes specified in condition 7.2; and~~
- ~~(b) keep the date of birth of the vendor secure and confidential.~~

~~7.4 The vendor must ensure that at or before settlement, the purchaser receives—~~

- ~~(a) a release from the secured party releasing the property from the security interest; or~~
- ~~(b) a statement in writing in accordance with section 275(1)(b) of the Personal Property Securities Act 2009 (Cth) setting out that the amount or obligation that is secured is nil at settlement; or~~
- ~~(c) a written approval or correction in accordance with section 275(1)(c) of the Personal Property Securities Act 2009 (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.~~

~~7.5 Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—~~

- ~~(a) that—~~
  - ~~(i) the purchaser intends to use predominately for personal, domestic or household purposes; and~~
  - ~~(ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the Personal Property Securities Act 2009 (Cth), not more than that prescribed amount; or~~
- ~~(b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.~~

~~7.6 The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property described in general condition 7.5 if—~~

- ~~(a) the personal property is of a kind that may or must be described by serial~~

- number in the Personal Property Securities Register; or
- ~~(b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.~~
- 7.7 ~~A release for the purposes of general condition 7.4(a) must be in writing.~~
- 7.8 ~~A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.~~
- 7.9 ~~If the purchaser receives a release under general condition 7.4(a), the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.~~
- 7.10 ~~In addition to ensuring a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.~~
- 7.11 ~~The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Properties Securities Register, which the purchaser reasonably requires to be released at least 21 days before the due date for settlement.~~
- 7.12 ~~The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.~~
- 7.13 ~~If settlement is delayed under general condition 7.12, the purchaser must pay the vendor—~~
- ~~(a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and~~
- ~~any reasonable costs incurred by the vendor as a result of the delay—~~
- ~~as though the purchaser was in default.~~
- 7.14 ~~The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.~~
- 7.15 ~~Words and phrases used in general 7 which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning on general condition 7 unless the context requires otherwise.~~
8. **Not used. Builder warranty insurance**  
~~The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.~~
9. **Not used. General law land**
- 9.1 ~~This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.~~
- 9.2 ~~The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.~~
- 9.3 ~~The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.~~
- 9.4 ~~The purchaser is taken to have accepted the vendor's title if:~~
- ~~(a) 21 days have elapsed since the day of sale; and~~
- ~~(b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.~~
- 9.5 ~~The contract will be at an end if:~~
- ~~(a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and~~
- ~~(b) the objection or requirement is not withdrawn in that time.~~
- 9.6 ~~If the contract ends in accordance with general condition 10.1, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.~~
- 9.7 ~~General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the Transfer of Land Act 1958, as if the reference to 'registered proprietor' is a reference to 'owner'.~~
- MONEY**
10. **Settlement**
- 10.1 At settlement:
- (a) the purchaser must pay the balance; and
- (b) the vendor must:
- (i) ~~do all things necessary to enable the purchaser to become the registered proprietor of the land that are reasonably the responsibility of the vendor to enable the purchaser to become~~

the registered proprietor of the property; and

- (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.

10.2 The vendor's obligations under this general condition continue after settlement.

10.3 Settlement must be conducted at the offices of the vendor's legal practitioner or any other place nominated by them in Australia between the hours of 10.00 a.m. and ~~4.00~~ 3.00 p.m. unless the parties agree otherwise.

## 11. Payment

11.1 The purchaser must pay the deposit:

~~(a) to the vendor's licensed estate agent; or~~

~~(b)~~ (a) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or

~~(c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.~~

11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:

- (a) must not exceed 10% of the price; and
- (b) must be paid to the vendor's ~~estate agent, legal practitioner or conveyancer~~ or conveyancer and held by the ~~estate agent, legal practitioner or conveyancer~~ on trust for the purchaser until the registration of the plan of subdivision.

11.3 The purchaser must pay all money other than the deposit:

- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
- (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

11.4 At settlement, payments ~~may~~ must be made or tendered:

- ~~(a) in cash; or~~
- (b) by cheque drawn on an authorised deposit taking institution; ~~or~~
- ~~(c) if the parties agree, by electronically transferring the payment in the form of cleared funds.~~

11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under section 9(3) of **the Banking Act 1959** (Cth) is in force.

11.6 ~~At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking~~

~~institution, the vendor must reimburse the purchaser for the fees incurred.~~

## 12. Stakeholding

12.1 The deposit must be released to the vendor if:

- (a) the vendor provides particulars, to the reasonable satisfaction of the purchaser, that either—
  - (i) there are no debts secured against the property; or
  - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
- (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
- (c) all conditions of section 27 of the **Sale of Land Act 1962** have been satisfied.

12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.

12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

## 13. Not used. GST

~~13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:~~

- ~~(a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or~~
- ~~(b) if the particulars of sale specify that the supply made under this contract is of land on which a farming business is carried on and the supply (or a part of it) does not satisfy the requirements of section 38-480 of the GST Act; or~~
- ~~(c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or part of it) does not satisfy the requirements of section 38-325 of the GST Act.~~

~~13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.~~

~~13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.~~

~~13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:~~

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.
- 13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':
- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.
- 13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.
- 13.7 This general condition will not merge on either settlement or registration.
- 13.8 In this general condition:
- (a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- 'GST' includes penalties and interest.
- 14. Not used. Loan**
- 14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
- (a) immediately applied for the loan; and
- (b) did everything reasonably required to obtain approval of the loan; and
- (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
- (d) is not in default under any other condition of this contract when the notice is given.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.
- 15. Not used. Adjustments**
- 15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
- (b) the land is treated as the only land of which the vendor is owner (as defined in the Land Tax Act 2005); and
- (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
- (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.
- TRANSACTIONAL**
- 16. Time**
- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.
- 17. Not used. Service**
- 17.1 Any document sent by—
- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
- (b) email is taken to have been served at the time of receipt within the meaning of Section 13A of the Electronic Transactions (Victoria) Act 2000.
- 17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:
- (a) personally; or
- (b) by prepaid post; or
- (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
- (d) by email.
- 17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.
- 18. Not used. Nominee**
- The purchaser may nominate a substitute or additional purchaser, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.
- 19. Liability of signatory**
- Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the

purchaser in the case of a default by a proprietary limited company purchaser.

**20. ~~Not used. Guarantee~~**

~~The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.~~

**21. Notices**

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement. This general condition 21 does not apply to a notice, order, demand or levy which reasonably applies to the vendor's obligation to Register the Plan.

**22. Inspection**

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

**23. ~~Not used. Terms contract~~**

~~23.1 If this is a 'terms contract' as defined in the Sale of Land Act 1962:~~

~~(a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and~~

~~(b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.~~

~~23.2 While any money remains owing each of the following applies:~~

~~(a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;~~

~~(b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;~~

~~(c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each~~

~~amendment or renewal as evidence of the status of the policies from time to time;~~

~~(d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;~~

~~(e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;~~

~~(f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;~~

~~(g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;~~

~~(h) the purchaser must observe all obligations that affect owners or occupiers of land;~~

~~(i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.~~

**24. Loss or damage before settlement**

24.1 The vendor carries the risk of loss or damage to the property until settlement.

24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.

24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2 but may claim compensation from the vendor after settlement.

24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.

24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.

24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

**25. Breach**

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

#### DEFAULT

##### 26. Interest

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

##### 27. Default notice

27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.

27.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given—
  - (i) the default is remedied; and
  - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.
- (c) Without limiting any other right of the vendor, if the vendor issues a default notice under general condition 27, the vendor can at any time before expiration of the notice, revoke the notice by serving a notice to that effect.

##### 28. Default not remedied

28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the

reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and

- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- ~~(b) all these amounts are a charge on the land until payment; and~~
- ~~(c)~~(b) the purchaser may also recover any loss otherwise recoverable.

28.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
  - (i) retain the property and sue for damages for breach of contract; or
  - (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.

# Annexure B

## Special Conditions

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Contract:

**Additional Restrictions**

Includes all easements, encumbrances, rights, privileges, restrictions on use and covenants (including any draft restrictions and covenants included in the Disclosure Material), dedications of land, agreements (including, if the Relevant State is Victoria, the entering into of any agreement under section 173 of the *Planning & Environment Act 1987* (Vic)), leases, licences, other occupation rights and arrangements relating to all or part of the land comprised in the Development and which are:

- (a) required by an Authority;
- (b) required by a condition or an approval of an Authority; or
- (c) reasonably and properly required for the Development.

**Approval**

Any permit, licence, consent, certificate or other approval obtained or required to be obtained from an Authority in relation to the Development.

**Authority**

Any government, local government, semi-government, statutory or planning authority, including the Titles Office and the Council.

**Bank Guarantee**

An unconditional and irrevocable guarantee or undertaking by an Australian trading bank with a branch in Melbourne to pay money to the Seller's Solicitor:

- (a) without reference to the Buyer;
- (b) with an expiry date (if any) at least 30 days after the Sunset Date;
- (c) describe the purpose as "The deposit (or part thereof) for the purchase of Lot [#] on plan of subdivision no. PS826731D Stage No. 1 being part of the land comprised in certificates of titles volume 8314 folio 112, volume 9542 folio 679 and volume 9535 folio 202"; and

in a form satisfactory to the Seller including that the Bank Guarantee must be made in favour of The Partners of the firm trading as Corrs Chambers Westgarth.

**Bank Guarantor**

The bank giving the Bank Guarantee.

<b>Builder</b>	Builder(s) appointed by the Seller from time to time in relation to the Development (or part of the Development).
<b>Business Day</b>	Any day other than: (a) a Saturday or Sunday; (b) a public holiday in the capital city of the Relevant State; or (c) a day in the period 24 December to 2 January (inclusive).
<b>Buyer Claim</b>	Making any requisition, claiming compensation from the Seller, claiming a reduction in the Purchase Price, seeking to delay or extend Settlement, seeking to be discharged from the purchase of the Land or attempting to rescind or terminate this Contract.
<b>Certificate of Occupancy</b>	A certificate of occupancy issued under the <i>Building Act 1993</i> (Vic).
<b>Claim</b>	Any and all claims, actions, disputes, differences, demands, proceedings, accounts, interest, costs (whether or not the subject of a court order), loss, expenses and debts or liabilities of any kind (including those which are prospective or contingent and those the amount of which is not ascertained) of whatever nature and however arising.
<b>Commissioner</b>	The meaning given to that term in the TA Act.
<b>Commissioner of State Revenue</b>	The commissioner of state revenue under the <i>Duties Act 2000</i> (Vic).
<b>Contract Date</b>	The date of this Contract as inserted in the Particulars being the date on which both parties have signed this Contract.
<b>Council</b>	The local or municipal council or government with jurisdiction over the Parent Parcel.
<b>Default Interest Rate</b>	12% per annum.
<b>Design Guidelines</b>	The building design guidelines attached to this Contract, included in the Disclosure Material and any revised guidelines advised by the Seller to the Buyer from time to time.
<b>Development</b>	The residential estate of which the Property forms part, being developed by the Seller on the Development Site.
<b>Development Site</b>	All land including: (a) the Parent Parcel; (b) any land identified on the Plan; and (c) any land adjoining or near that land, on which the Seller and its contractors and consultants are undertaking or intend to undertake development activities as part of the Development.
<b>Disclosure Material</b>	This Contract, including all material attached to this Contract (in addition to that attached in <b>Annexure G</b> ), the Disclosure Statement (where applicable under the Governing Act), the



	<p>Design Guidelines and any other material given to the Buyer by the Seller and which is identified in writing by the Seller as Disclosure Material for the purposes of this Contract.</p>
<b>Disclosure Statement</b>	<p>A disclosure statement and associated materials relating to the Land given by the Seller to the Buyer before the Buyer entered into this Contract, if required under the Governing Act.</p>
<b>ELN</b>	<p>The Electronic Lodgement Network (as defined in the ECNL).</p>
<b>FATA Act</b>	<p>The <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth), the <i>Foreign Acquisitions and Takeovers Regulations 2015</i> (Cth) and Australia's Foreign Investment Policy as published on the Foreign Investment Review Board website (<a href="http://www.firb.gov.au">www.firb.gov.au</a>) from time to time.</p>
<b>FIRB Approval</b>	<p>A no objection notification, made by or on behalf of the Treasurer under the FATA Act and stating that the Commonwealth Government does not object to the transactions contemplated by this Contract, either unconditionally or subject to conditions.</p>
<b>Foreign Person</b>	<p>The meaning given to that term in the FATA Act.</p>
<b>Governing Act</b>	<p>(a) If the Relevant State is Queensland, the <i>Land Sales Act 1984</i> (Qld);</p> <p>(b) if the Relevant State is New South Wales, the <i>Conveyancing Act 1919</i> (NSW); and</p> <p>(c) if the Relevant State is Victoria, the <i>Sale of Land Act 1962</i> (Vic).</p>
<b>Guarantor</b>	<p>All the directors of the Buyer.</p>
<b>House</b>	<p>A residential dwelling and ancillary fencing and landscaping which meets all requirements of the Design Guidelines, including obtaining the approval of the Seller or its nominee to the relevant plans and specifications.</p>
<b>Land</b>	<p>The parcel of land sold under this Contract, as identified in the Particulars.</p>
<b>Online Duties Form</b>	<p>The digital form introduced and imposed by the State Revenue Office for the purpose of assessment of duty on transfers of land.</p>
<b>Outgoings</b>	<p>All outgoings, costs and expenses in respect of the Property and includes Rates and land tax.</p>
<b>Parent Parcel</b>	<p>The larger parcel (or parcels) of land identified on the Plan as:</p> <p>(a) if at the Contract Date there is not a Title, the underlying land from which the Land will be ultimately subdivided; and</p> <p>(b) if at the Contract Date there is a Title, the underlying land which was subdivided to create, amongst other land, the Land.</p>
<b>Particulars</b>	<p>The information schedule at the front of this Contract which forms part of the Standard Form, which has been completed to include details about the sale of the Property.</p>

<b>Personal Information</b>	All personal information (as defined in the Privacy Act) relating to the Buyer, including all personal information set out in this Contract and otherwise collected by the Seller or on its behalf whether prior to or after the date of this Contract.
<b>Plan</b>	(a) If at the Contract Date there is not a Title, a plan of subdivision generally in the form of the proposed plan (as amended, varied or otherwise affected from time to time in accordance with the Contract) attached to this Contract as <b>Annexure C</b> ; and  (b) if at the Contract Date there is a Title, the Registered Plan attached to this Contract as <b>Annexure C</b> .
<b>Privacy Act</b>	The <i>Privacy Act 1988</i> (Cth) and any regulations, ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under that Act, as amended from time to time.
<b>Property</b>	The Land and all improvements, fixtures and inclusions on the Land, but does not include any item that is identified in the Particulars as being excluded from sale.
<b>Property Service</b>	Any water supply, sewerage, drainage, gas, electricity, telecommunications (including the national broadband network) or other service and, where the context permits, includes all infrastructure, machinery and installations for the conveyance, support, operation, protection and maintenance of supply of a service.
<b>Purchase Price</b>	The price to be paid for the Property as specified in the Particulars.
<b>Rates</b>	All rates and charges by any competent Authority and includes Council rates, water rates and fire service levies.
<b>Registered Plan</b>	The Plan (as amended, varied or otherwise affected from time to time in accordance with this Contract) as registered at the Titles Office.
<b>Related Body Corporate</b>	The meaning given to it in the <i>Corporations Act 2001</i> (Cth).
<b>Relevant State</b>	The State in which the Parent Parcel is located.
<b>Required Rating</b>	Either:  (a) a financial strength rating of A1 or higher from Moody's Investor Services Inc (a corporation organised and existing under the laws of the State of Delaware in the United States of America); or  (b) a financial strength rating of A+ or higher from Standard and Poor's (Australia) Pty Limited (a company incorporated in Victoria).
<b>Sale or Sell</b>	Includes a sale, agreement to sell, the granting of an option or a transfer or any similar agreement or structure.

<b>Sale of Land Act</b>	The <i>Sale of Land Act 1962</i> (Vic).
<b>Security Interest</b>	Has the meaning given to that term in the <i>Personal Property Securities Act 2009</i> (Cth).
<b>Service</b>	Any water supply, gas supply, electricity supply, sewerage and telecommunications (including the national broadband network) .
<b>Settlement</b>	Completion in accordance with this Contract.
<b>Settlement Date</b>	The date on which Settlement takes place.
<b>Settlement Due Date</b>	The date set out in the Settlement Due Date panel in the Particulars of Sale being the date on which Settlement is due to occur.
<b>Settlement Notice</b>	Is a notice given by the Seller to the Buyer that the Plan creating the Land has been registered by the Titles Office.
<b>Site</b>	All the land in the residential neighbourhood development undertaken by the Seller currently referred to as the Officer development at 46-50 Bayview Road, Officer, Victoria.
<b>Site Conditions</b>	Physical conditions on, above, below or about the Land or its surroundings, including natural and artificial conditions, geo-technical and sub-surface conditions, any latent or patent defect, contamination or the existence of any hazardous substances or things and the location and capacity of Property Services, whether or not they could reasonably have been anticipated at the Contract Date or at any other time.
<b>Solicitor</b>	Where appearing in the Particulars or these Special Conditions includes a legal representative or other party nominated as acting for the Seller or the Buyer (as the case may be).
<b>Special Conditions</b>	The special conditions contained in this <b>Annexure A</b> to this Contract.
<b>Standard Form</b>	The general conditions 1 to 28 (inclusive) as were formerly contained in Part 2 of the standard form of contract prescribed by the <i>Estate Agents (Contracts) Regulations 2008</i> (Vic) prior to their revocation on 11 August 2018 (as reproduced at the beginning of this Contract with deletions struck-through and additions underlined).
<b>Sunset Date</b>	The date which is 24 months after the Contract Date.
<b>Title</b>	A separate freehold title for the Land issued by the Titles Office.
<b>Title Encumbrances</b>	All encumbrances (other than mortgages) which are: (a) registered on the title of: (i) if at the Contract Date there is not a Title, the Parent Parcel at the Contract Date; or (ii) if at the Contract Date there is a Title, the Land at the Contract Date;

- (b) disclosed or identified on the Plan, including any restrictions on the use of land;
- (c) arising by operation of any statute in respect of the Land;
- (d) identified or disclosed in the Disclosure Material; or
- (e) registered in respect of the Land in accordance with this Contract.

**Titles Office**                      The Land Titles Registry or Office in the Relevant State.

## 1.2 Interpretation

The following rules of interpretation apply to this Contract unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a person includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, trust, successors, substitutes (including persons taking by novation) and assigns;
- (c) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (d) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
- (e) subject to Special Condition 1.3, if a word or phrase is defined in the Standard Form:
  - (i) it has the same meaning in these Special Conditions, unless the term is defined differently in these Special Conditions; and
  - (ii) if it can be used interchangeably with a term used in these Special Conditions, the term used in these Special Conditions has the same meaning as that other term, including for example:
    - (A) Seller means Vendor;
    - (B) Buyer means Purchaser;
    - (C) Settlement means Completion;
    - (D) Deposit Holder means Stakeholder;
    - (E) Settlement Date means Completion Date and Date for Completion;
    - (F) Contract Date means Day of Sale; and
    - (G) vice versa in each case;
- (f) the Standard Form is reproduced in this Contract with amendments to these General Conditions being depicted by strike-throughs if they are deletions and underlining if they are additions;
- (g) headings are intended only to facilitate the reading of this Contract and are of no effect in relation to the interpretation of this Contract or of any of the provisions expressed or implied in this Contract;

- (h) a reference to a status, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (j) the word 'includes' in any form is not a word of limitation;
- (k) a reference to a '\$' or 'dollar' is to Australian currency; and
- (l) the obligations imposed and the benefits conferred under this Contract on each of the parties are binding upon and enure for the benefit of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

### **1.3 Order of Precedence**

The Buyer and the Seller agree that if there is:

- (a) any conflict or inconsistency arising between these Special Conditions, the Design Guidelines, the Particulars and the Standard Form, the ranking in priority will be as follows:
  - (i) first these Special Conditions;
  - (ii) second the Standard Form;
  - (iii) third the Particulars; and
  - (iv) fourth the Design Guidelines; or
- (b) any conflict or inconsistency between this Special Condition and any other Special Condition then, except in the case of manifest error, to the extent of the conflict or inconsistency, the provisions of any other Special Condition will prevail and have priority over this Special Condition.

### **1.4 Business Days**

If anything is required to be done on a day that is not a Business Day, it must be done on the next Business Day.

## **2 Representations, Warranties and Acknowledgments**

### **2.1 Disclosure Material/Statement acknowledgement**

The Buyer acknowledges receiving the Disclosure Material and (where applicable under the Governing Act) the Disclosure Statement in respect of the Property in compliance with the applicable requirements of the Governing Act before entering into this Contract.

### **2.2 Representations and warranties**

- (a) This Contract is the whole agreement between the parties and contains all representations, warranties, promises and agreements of the parties in respect of its subject matter.
- (b) The Buyer represents and warrants to the Seller that:
  - (i) the Buyer has inspected the Property;
  - (ii) unless otherwise stated in this Contract, the Buyer has not entered into this Contract in reliance on any express or implied statement, representation, promise or warranty made by or on behalf of the Seller in respect of any

matters relating to the Property (including any improvements, fixtures, furnishings, chattels and inclusions) or which has or may affect the Property, including:

- (A) its suitability for any use (including any restrictions applying to that use);
  - (B) the Site Conditions;
  - (C) any financial return or income likely to be derived from it;
  - (D) any market analysis, estimate, opinion or other statement, comment or prediction as to the future; and
  - (E) any Property Service or proposed Property Service to the Property, being a joint Property Service with another lot, the pipes or connections for or related to any service to the other lots passing through the Property or the pipes or connections of any Authority responsible for the provision and maintenance of any Property Service passing through the Property; and
- (iii) the Buyer relies on the Buyer's own enquiries in relation to all matters affecting the Property, whether or not disclosed in this Contract, the Disclosure Material and (where applicable under the Governing Act) the Disclosure Statement.
- (c) No warranty or representation is made by or on behalf of the Seller as to the accuracy or completeness of the Disclosure Material and (where applicable under the Governing Act) the Disclosure Statement.
- (d) Without limitation to any other provision in this Contract, the Buyer confirms, warrants and acknowledges to the Seller that:
- (i) the Buyer has undertaken its own investigations and enquiries in respect of the Property prior to entering into this Contract;
  - (ii) any material or information provided or made available by or on behalf of the Seller has been provided for the purpose of assisting the Buyer in determining the direction of its own independent enquiries into, and independent assessments of, the Property;
  - (iii) prior to entering into this Contract, the Buyer has satisfied itself with respect to all matters relating to or arising out of those investigations and enquiries and has relied entirely upon its own enquiries and inspections in respect of the Property; and
  - (iv) the Buyer will not make any Buyer Claim as a direct or indirect result of the investigations, enquiries or disclosure referred to in this Special Condition 2.2.

### **3 Deposit**

#### **3.1 Payment of the Deposit**

- (a) The Deposit must:
- (i) not exceed 10% of the Purchase Price.
  - (ii) be paid to the Seller's Solicitor to be held on trust for the Buyer in the Seller's Solicitor's trust account until the earliest to occur of:
    - (A) registration of the Plan in accordance with the Sale of Land Act; and
    - (B) termination or rescission of this Contract.

### 3.2 Investment of Deposit

- (a) If the Deposit (or any part of it) is paid by cheque or electronic funds transfer, the Seller and the Buyer authorise the Seller's Solicitor to invest the Deposit (or that part of it) in an interest bearing trust account with the Seller's Solicitor's bank until the earliest to occur of:
  - (i) Settlement; and
  - (ii) termination or rescission of this Contract.
- (b) Any interest earned on the money invested under **Special Condition 3.2** (less all proper bank and government charges, fees and taxes) will be paid to the Seller.
- (c) Neither party will make any Claim against the Seller's Solicitor for any taxes deducted from the interest earned on the money invested under **Special Condition 3.2**, because of failure by that party to give its tax file number to the Seller's Solicitor's bank.
- (d) Neither the Seller nor the Seller's Solicitor is liable to the Buyer under any circumstances if withholding tax is deducted from the interest.

## 4 Property Restriction and Objections

- (a) Unless otherwise provided in these Special Conditions, the Buyer accepts:
  - (i) the state of repair or condition of the Property (including any improvements, fixtures, furnishings, chattels and inclusions);
  - (ii) the state of repair or condition of any Property Service to and on the Property;
  - (iii) the presence of any sewer, manhole or vent on the Property; and
  - (iv) any Site Conditions in relation to the Land.
- (b) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 4(a)**.

## 5 Capacity

Without affecting any other right of the Seller, the Seller may terminate this Contract by written notice to the Buyer if the Buyer or any Guarantor:

- (a) being a natural person:
  - (i) dies;
  - (ii) becomes incapable because of unsoundness of mind to manage his or her own affairs; or
  - (iii) is declared bankrupt or enters into any scheme with, or makes any assignment of, his or her estate for the benefit of his or her creditors; or
- (b) is a company and:
  - (i) resolves to go into liquidation;
  - (ii) has a petition for its winding up presented and not withdrawn within **30 days** of presentation;

- (iii) enters into any scheme of arrangement with its creditors under the relevant provisions of the *Corporations Act 2001* (Cth) or any similar legislation;
- (iv) has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed to it;
- (v) is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to it; or
- (vi) is deemed or taken under the laws of Australia to be subject to a similar event or to be unable to pay its debts.

## 6 Settlement

### 6.1 Settlement requirements

- (a) Settlement of this Contract must take place on the Settlement Due Date.
- (b) Without affecting the Seller's other rights, if any money payable by the Buyer under this Contract is not paid when due (or the Seller extends the Settlement Due Date as a direct consequence of a request or default of the Buyer), the Buyer must pay the Seller interest on that money calculated at the Default Interest Rate from the due date for payment (or the original Settlement Due Date, whichever is earlier) until payment is made. Interest is capitalised on the first day of each month. The Buyer must pay the interest at Settlement and the Seller is not obliged to complete this Contract unless the Buyer pays that interest. The Seller may recover any interest from the Buyer as liquidated damages.
- (c) The Seller is not regarded as unable, not ready or unwilling to complete because of the existence of a charge on the Land in respect of any Outgoings.
- (d) If the Buyer fails to deliver to the Seller the Transfer within the time period set out in general condition 6 of this Contract, the Buyer agrees to pay to the Seller by way of adjustment at completion, the sum of \$50.00 towards the cost of arranging execution of such Transfer on short notice. The buyer acknowledges that the payment of such sum is an essential term of this Contract.

### 6.2 Seller may extend Settlement Date

The Seller may, in its sole discretion and by written notice to the Buyer, extend the Settlement Due Date by a period of not more than one month. The Seller may extend the Settlement Due Date under this **Special Condition 6.2** on any number of occasions, provided that the extended Settlement Due Date is not later than the date that is one month after the original Settlement Due Date.

### 6.3 Delayed settlement

Without limiting any other rights of the Seller, if the Buyer fails to settle on the Settlement Due Date, requests an extension to the Settlement Due Date or settlement is delayed as contemplated by **Special Condition 27.3(c)**, the Buyer must pay, as an adjustment at Settlement or as a separate bank cheque (as determined by the Seller's Solicitor), an amount of \$550 (inclusive of GST) to the Seller's Solicitor representing a contribution to the Seller's additional legal costs and expenses.



## 7 Registration of Plan

- (a) If at the Contract Date a Title does not exist for the Land, Settlement of this Contract is conditional on registration of the Plan at the Titles Office and the creation of the Title.
- (b) If on or after the Sunset Date:
  - (i) where the Relevant State is Queensland, Settlement has not been effected; or
  - (ii) where the Relevant State is New South Wales or Victoria, registration of the Plan at the Titles Office and the creation of the Title has not occurred,then either party may (provided it is not in default under this Contract), by giving written notice to the other party, rescind this Contract before Settlement is effected. Upon rescission, the Deposit will be refunded to the Buyer and neither party will have any other right, claim or cause of action against the other because of the rescission, Settlement not having occurred or the Plan not being registered or the Title not being created.
- (c) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this **Special Condition 7**.

## 8 Management of the Property

### 8.1 Seller has no obligations

The Seller is not obliged to:

- (a) clean or tidy the Land;
- (b) remove any rubbish, debris or other items from the Land;
- (c) repair, maintain or replace anything on the Land; or
- (d) carry out any renewals or replacement of, or incur capital expenditure (according to normal accounting principles) in relation to, any improvements or property on the Land,
- (e) prior to Settlement or at all.

### 8.2 Fencing

The Buyer acknowledges and agrees that:

- (a) the Buyer accepts the fencing and any retaining wall on or around the Land in its condition at Settlement;
- (b) the Seller is not required to make any contribution towards installing or maintaining any fencing or retaining wall on or around the Property, including if Land is unfenced or if the Seller is the registered owner of any adjoining land;
- (c) the Seller does not warrant that the boundary fences on the Land align with, or are erected on, the boundary lines of the Land, or that there is no encroachment onto the Land;
- (d) the Buyer:
  - (i) must not make a Buyer Claim due to any matter in this **Special Condition 8.2**; and

- (ii) to the extent it is lawfully able to do so, waives its rights under any legislation in the Relevant State or at common law to claim a contribution from the Seller for the installation or maintenance of any fencing or retaining wall on or affecting the Land; and
- (e) if the Relevant State is Victoria, the maximum amount of any contribution by the Seller (in its capacity as the owner of an adjoining parcel) towards the cost of constructing any dividing fence will be \$1.00.

## 9 Alterations to the Plan and Additional Restrictions

### 9.1 Alterations to the Plan

- (a) Subject to the provisions of any relevant legislation (including the Governing Act), the Buyer acknowledges that the Seller may make such alterations or variations to the Plan which the Seller considers necessary or desirable or which may be required by any Authority.
- (b) Without limiting the Seller's rights under **Special Condition 9.1(a)**, the Buyer agrees that it will not be materially prejudiced by, and must not make any Buyer Claim in respect of:
  - (i) any minor variation to the dimensions or discrepancies in the position of the Land;
  - (ii) any minor reduction in the area of the Land;
  - (iii) any variation to the lot numbering of the Land;
  - (iv) any variation which may be required by the Seller or any Authority to the number, dimensions, area, position or numbering of any of the lots within the Development other than the Land; or
  - (v) the creation of or change in location of any easements, restrictive covenants or positive covenants,  
between those shown on the Plan and those shown on the Registered Plan.
- (c) The sale of the Land is subject to any Title Encumbrance.
- (d) The Seller may register (or allow to be registered) on the Title of the Land, any easement or other encumbrance that may be required by the Seller or any relevant Authority and the Buyer must not make any Buyer Claim in respect to such encumbrance.
- (e) For the purposes of **Special Condition 9.1(b)**:
  - (i) 'minor variation' is a change which does not substantially, detrimentally and permanently affect the Land; and
  - (ii) 'minor reduction in the area of the Land' shall be a variation which diminishes the area of the Land by less than or equal to 5%.
- (f) The Seller specifically reserves the right to subdivide any lot (other than the Land) on the Plan into more lots and to amalgamate any lot (other than the Land) with any other lot (other than the Land) on the Plan and the Buyer must not make any Buyer Claim in relation to such subdivision and/or amalgamation.
- (g) The Buyer must not make any Buyer Claim in relation to any matter relating to any lot on the Plan or on the Registered Plan other than the Land.

- (h) The Buyer agrees that section 10(1) of the Sale of Land Act will not apply in respect of the final location of any easements shown on the Plan.

## 9.2 Additional Restrictions

- (a) The Buyer acknowledges and agrees that:
  - (i) as at the Contract Date and the Settlement Date, not all of the Additional Restrictions may have been entered into, granted or finalised; and
  - (ii) subject to any relevant legislation (including the Governing Act) the Seller can enter into, grant, finalise or modify any Additional Restriction on or after the Contract Date.
- (b) Within 5 Business Days after receipt of a request from the Seller, the Buyer must execute any acknowledgement, consent or other document required by the Seller under which the Buyer:
  - (i) agrees to accept and observe an Additional Restriction; and
  - (ii) acknowledges that the Additional Restriction runs with the relevant land.
- (c) The Buyer acknowledges and agrees that the Seller may require the Buyer to create in the instrument of transfer of the Property, any Additional Restrictions in the form of easements or covenants which burden the Property.

## 9.3 No Buyer Claim

The Buyer must not make any Buyer Claim in relation to:

- (a) any matter disclosed or mentioned in this **Special Condition 9**;
- (b) any alleged misdescription of the Land or deficiency in its area or measurements; or
- (c) any renumbering, reconfiguration or consolidation of the lots on the Plan.

## 10 Services

- (a) The Buyer acknowledges that a Property Service, Title Encumbrance or Additional Restriction may affect the location of any dwelling and other improvements on the Land and that, prior to the Contract Date, the Buyer has satisfied itself in all respects about any such affectation.
- (b) The Buyer must:
  - (i) take into account the location of any Property Service, Title Encumbrance or Additional Restriction when designing a dwelling or other improvement for construction on the Land; and
  - (ii) pay all costs associated with the design and construction of a dwelling or other improvement on the Land as a result of the location of any Property Service, Title Encumbrance or Additional Restriction affecting the Land.

## 11 Buyer's Acknowledgment

### 11.1 Acknowledgments

The Buyer acknowledges that:

- (a) the title(s) to the lots on the Registered Plan, other than the Land, may be encumbered, affected or amended by any one or more of the following without such

encumbrance, affectation or amendment being disclosed in this Contract, the Disclosure Material and (where applicable under the Governing Act) the Disclosure Statement; and

- (b) the Buyer must not make a Buyer Claim in respect of any of the following:
  - (i) redefinition of the boundaries of any lot;
  - (ii) minor road realignment or dedication of any lot;
  - (iii) leases, easements or dedications relating to the provision of electricity and the establishment of substations;
  - (iv) alteration to the lot numbers;
  - (v) easements and/or restrictions on use in favour of any Authority, property and/or person but not so as to burden the Land;
  - (vi) any easement or restriction on use affecting or benefiting any lot in the Registered Plan other than the Land which is disclosed or referred to in the Plan, the Disclosure Material and (where applicable under the Governing Act) the Disclosure Statement; or
  - (vii) any town planning or other application to the Council or other relevant Authority made by the Seller (or anyone on its behalf) relating to the above matters;
- (c) the Buyer has relied on its own assessment of the condition of the Property in purchasing the Property;
- (d) the Buyer has not relied on any warranty or representation made by the Seller in relation to availability, provision or timing for provision (if applicable) of the installation of the optic fibre infrastructure, the capacity or speed of the internet services available after installation or in relation to the availability or number of services that the Buyer may access once connected to the optic fibre infrastructure and to the full extent permitted by the law, the Buyer waives any liability which the Seller may otherwise have to the Buyer in relation to such matters;
- (e) the Seller has been or may be in the course of carrying out infrastructure and other works on the Site and that the Site may be filled, raised, levelled, compacted or cut;
- (f) it received from the Seller or the Seller's Agent, prior to execution of this Contract, a copy of this Contract, the Disclosure Materials executed by the Seller; and
- (g) no promise about the obtaining of a loan of money to defray some or all of the Purchase Price was made by or on behalf of the Seller, the Seller's Agent or the auctioneer.

## **11.2 Compliance**

The Buyer assumes full responsibility for compliance with all existing and future planning, environmental and building controls and Approvals as from the Settlement Date and agrees to hold the Seller indemnified at all times against all Claims which the Seller suffers arising directly or indirectly out of the Buyer's failure to comply with those building controls or Approvals or the Buyer's breach of or failure to obtain from the Settlement Date.

## **11.3 Buyer Claims**

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this **Special Condition 11**.

## 12 Estate Development

- (a) The Buyer acknowledges and agrees that:
- (i) the Property may form part of the Development Site and be part of a larger or multi-staged estate;
  - (ii) not all of the lots on the Plan may be sold before the Settlement Date;
  - (iii) further development of surrounding lots or stages may occur after Settlement including surveying, engineering and construction works on the land in the Plan, and the balance of the Site (**Ongoing Works**) and the Seller or Builder may need access to the Property to carry out the Ongoing Works after the Settlement Date;
  - (iv) the Seller (and its contractors) and the Builder (and its contractors) may:
    - (A) be obliged to carry out rectification and repair works after the Settlement Date to dwellings constructed on other lots in the Plan (**Repair Works**);
    - (B) be undertaking construction or Repair Works on a lot adjacent to the Property (**Construction Works**),  
and may need access to the Property after the Settlement Date to carry out those works.
  - (v) dust, noise, vibration, nuisance or other inconvenience in relation to development of lots or development stages near the Property may be experienced by the Buyer or its successors in title; and
  - (vi) development works may:
    - (A) involve the stockpiling of materials and use of heavy machinery on lots or development stages near the Property, or necessitate changes to traffic conditions in or near the Property.
    - (B) cause temporary obstruction or interference with services to the Property;
    - (C) result in access roads in the vicinity of the Property being temporarily diverted during the course of the Development Activities; and
    - (D) result in construction traffic in the vicinity of the Property to carry out Development Activities after the Settlement Date.
- (b) The Seller may:
- (i) complete all or part of the Development in stages or otherwise in a timeframe and to standards determined in its discretion;
  - (ii) remove trees or other vegetation on any lot in the Development;
  - (iii) sell, transfer or otherwise dispose of any part of the Development Site;
  - (iv) change any part of the title structure in the Development (i.e. establish community title or other scheme) or use or authorise the use of any land in the Development Site for medium or high density housing, child care centres, schools and commercial and retail centres;
  - (v) reconfigure, increase or decrease the number of lots or the amount of open space, community facilities, roads, footpaths or other features in the Development Site;

- (vi) use or authorise the use of any land in the Development Site as a display home;
  - (vii) change the nature and type of property developed and sold, and the business and activities carried on, within the Development based on matters such as market demand and economic conditions;
  - (viii) change, withdraw or apply for further Council and other Authority approvals relating to the Development; or
  - (ix) change the Development in any other respect.
- (c) The Seller does not make any representations nor give any assurances as at the Contract Date or at the Settlement Date as to:
- (i) the nature and type of property developed and sold, and the business and activities carried on, within the Development Site;
  - (ii) the final type, nature and composition of the properties comprised in the Development (including those which may be adjacent to, or in close proximity to, the Property);
  - (iii) the nature, shape, design, final location or layout of any infrastructure associated with the Development (including roads, interchanges, overpasses, noise barriers, telecommunication towers and associated equipment, town centre, libraries, bus stations, schools, health facilities, child care facilities, supermarkets, bicycle paths, walking trails, wetlands, parks and open spaces (**Development Infrastructure**));
  - (iv) when (and if) the Development or any Development Infrastructure will be completed, including whether any such Development Infrastructure will be completed before the Settlement Date;
  - (v) the manner in which the Development will be carried out; and/or
  - (vi) the extent of changes that may be required to the Development and/or Development Infrastructure based on matters such as market demand and economic conditions.
- (d) As at the Day of Sale, the Seller intends to develop a park and recreation area and the Buyer acknowledges and agrees that:
- (i) it is the Seller's current intention that the park and recreation area will be constructed in the area identified on the plan attached in **Annexure F** as "Recreation Area");
  - (ii) it is the Seller's current intention that the park and recreation area will be accessible to members of the general public and may be used for events and recreation;
  - (iii) while the Vendor intends that completion of the works is to occur after settlement of the lots in Stages 2 and 3 of the Development, the timing for construction and completion of these works is still being determined; and
  - (iv) the Vendor makes no representations or warranties as to the accuracy of the design, location or size of the park and recreation area as described in any marketing collateral issued by the Vendor from time to time, as such details may be subject to change during the development of the lake and wetlands area;

- (e) The Buyer grants to the Seller (and its contractors) and the Builder (and its contractors) a right to access the Property after the Settlement Date (but only where reasonably necessary) to carry out the Ongoing Works, Repair Works and Construction Works.
- (f) The Buyer is not entitled to lodge any objection against, nor to make any Buyer Claim, including for any damages, loss, nuisance or inconvenience, arising out of any development works carried out before or after Settlement or the matters disclosed in this **Special Condition 12**.

## 13 Selling and Leasing Activities

### 13.1 Acknowledgments

The Buyer acknowledges and agrees that the Seller and any persons authorised by the Seller, may before and after Settlement:

- (a) conduct selling and leasing activities within the Development Site other than from within the Property;
- (b) place and maintain in, on or about the Development Site, other than in or upon the Property, signs in connection with selling and leasing activities; and
- (c) place and maintain in, on and about the Development Site other than the Property, an office and/or other facility for salespersons or other activities associated with the Development,

(together, **Marketing Activities**).

## 14 No Caveat

### 14.1 Restriction on lodgement

The Buyer must not:

- (a) lodge a caveat on the title to the Land or the Parent Parcel, in respect of any interest of the Buyer arising out of this Contract; or
- (b) register or attempt to register any other dealing or encumbrance on the title to the Land or the Parent Parcel,

prior to Settlement.

### 14.2 Rights and remedies

- (a) If the Buyer lodges (or allows to be lodged on the Buyer's behalf), or a person claiming through the Buyer lodges, a caveat which delays or prevents registration of the Plan or any other dealing (provided that the dealing is not in breach of this Contract), the Buyer must immediately on receipt of written notice from the Seller or the Seller's Solicitor:
  - (i) withdraw that caveat or have that caveat withdrawn; or
  - (ii) consent to the registration of the Plan or other dealing at the Buyer's cost.
- (b) If the Buyer fails to comply with **special condition 14.2(a)** within seven (7) days of receipt of written notice, the Buyer irrevocably nominates and appoints the Seller's Solicitor as its attorney to withdraw the caveat or consent to the registration of the Plan or other dealing (as the case may be). The appointment survives the rescission

or termination of this Contract by either party.

- (c) The Buyer agrees to indemnify the Seller against all Claims of any nature suffered or incurred by the Seller in connection with or arising from breach of this **special condition 14** by the Buyer.

## 15 Real Estate Agent Warranty

The Buyer warrants to the Seller that the Buyer was not introduced to the Seller by a real estate agent other than the agent named in this Contract (if any) and the Buyer indemnifies the Seller in respect of any breach of this warranty.

## 16 Outgoings Adjustments

- (a) If by Settlement a separate assessment for Rates in respect of the Land has issued, then the Rates will be adjusted on the basis that the Buyer is responsible for them from the day after Settlement. Rates will be adjusted on a paid basis and If required by the Seller, the Buyer will accept an undertaking by the Seller (such undertaking is hereby given) that the Seller will pay the Rates when they become due and payable. The Buyer acknowledges that there will be no subsequent readjustment of Rates following Settlement;
- (b) If by Settlement a separate assessment for Rates in respect of the Land has not issued, then:
  - (i) the parties will adjust the Rates on a paid basis on an agreed value of **\$300.00 per quarter** for Council rates and if rateable **\$250.00 per quarter** for water and sewerage rates;
  - (ii) if required by the Seller, the Buyer will accept an undertaking by the Seller (such undertaking is hereby given) that the Seller will pay the Rates when they become due and payable;
  - (iii) the Buyer acknowledges that there will be no subsequent re-adjustment of Rates on the actual amount assessed or paid; and
  - (iv) the payment of any Rates assessed on the Property in relation to a period after Settlement is the responsibility of the Buyer.
- (c) The Buyer will not be entitled to make a Buyer Claim, and (apart from the adjustments referred to in this **Special Condition 16**) nor will the Buyer be entitled to require either a retention of or deduction from the Purchase Price, in respect of the payment of any Outgoings.
- (d) The Buyer is responsible for the cost of the first four Bank cheques payable at Settlement. The cost of any additional Bank cheque is the responsibility of the Seller.

## 17 Land tax

### 17.1 Basis for adjustment

- (a) The Buyer acknowledges and agrees that:
  - (i) the relevant assessment for land tax is that effected on 31 December of the year preceding the Settlement Date which includes all the titles that comprise the Parent Title (**Land Tax Assessment**); and



- (ii) land tax is adjusted based on the proportional land tax stated on the Land Tax Assessment.
- (b) The Seller is liable for land tax assessed on the Land for the relevant land tax year current at the Settlement Date. If land tax is unpaid at the Settlement Date, the Buyer will accept an undertaking by the Seller (such undertaking is hereby given) that it will pay the land tax when it becomes due and payable.

## 18 Value of Property

### 18.1 Provision of information

The Seller agrees that it will provide the Buyer with all information and do all things as may be reasonably required by the Buyer or by the Commissioner of State Revenue in relation to the assessment and payment of duty on the transfer of the Property under this Contract.

### 18.2 Buyer acknowledgement

The Buyer acknowledges and agrees that:

- (a) neither the Seller nor anyone acting on its behalf has made any representation or warranty to the Buyer as to:
  - (i) the stamp duty payable by the Buyer in connection with this sale and transfer of the Property and the Buyer has made its own enquiries and investigations as to the duty payable on the transfer; or
  - (ii) the eligibility of any grants or incentives offered by the Commissioner of State Revenue or provided for under the *Duties Act 2000* (Vic) and the Buyer has made its own enquiries and investigations as to the availability of any such grants or incentives, and

the Buyer should not and has not in any way relied upon any representation, declaration, warranty or promise (if any) made by or on behalf of the Seller in respect of the duty payable or in respect of the availability of such grants or incentives;
- (b) some or all of the GST component of the price for the Property will be subject to ad valorem stamp duty;
- (c) the requirements of the Commissioner of State Revenue may change between the Contract Date and the Settlement Date;
- (d) the Seller will not be obliged to provide the Buyer with any information or documents required by the Commissioner of State Revenue earlier than one week prior to the Settlement Due Date;
- (e) it is liable to pay any amount of duty assessed by the Commissioner of State Revenue in connection with this sale and transfer of the Property; and
- (f) the amount of duty payable by the Buyer may vary depending on the specific circumstances of the Buyer, including whether the Buyer:
  - (i) is a Foreign Person;
  - (ii) meets the criteria for the principal place of residence concession; or
  - (iii) is a “first home buyer” for the purposes of the *Duties Act 2000* (Vic),

or such other eligibility criteria as set by the Commissioner of State Revenue or that apply under the *Duties Act 2000* (Vic) from time to time.

### 18.3 Buyer Claim

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 18**.

## 19 Guarantee of Corporate Buyer

### 19.1 Guarantee

- (a) If the Buyer is a company (other than a company listed on an Australian Stock Exchange) the Buyer must deliver to the Seller by the Contract Date, a guarantee of the Buyer's obligations under this Contract by the Guarantor unless otherwise agreed to by the Seller. The guarantee must be in the form attached to this Contract as **Annexure D** and for the purposes of this Special Condition such attachment must be executed by the Guarantors.
- (b) If the Buyer fails to deliver a guarantee as required under **Special Condition 19.1(a)**, the Seller can terminate this Contract at any time up to the earlier of:
  - (i) the date on which the Buyer provides a guarantee required by **Special Condition 19.1(a)**; and
  - (ii) Settlement.

### 19.2 Warranties

The Buyer represents and warrants to the Seller:

- (a) if the Buyer is a company, the Buyer is a body corporate duly formed or incorporated within the Commonwealth of Australia and is not under any disability;
- (b) the consent or licence of any person or body is not required prior to the Buyer entering into this Contract;
- (c) if this Contract has been signed by a person on behalf of a corporation, the person signing this Contract represents and warrants to the Seller as an additional inducement to the Seller to enter into this Contract, that he or she has authority pursuant to the constitution of that corporation to bind that corporation to all of the provisions contained in this Contract; and
- (d) a person executing this Contract as attorney for the Buyer represents and warrants to the Seller as an additional inducement to the Seller to enter into this Contract that he or she has been duly appointed attorney for the Buyer and that upon execution of this Contract, the Buyer will be bound as if the Buyer had executed this Contract personally.

## 20 Buyer as Trustee

If the Buyer enters into this Contract as trustee of any trust (the **Trust**), then the Buyer:

- (a) discloses that it enters into this Contract as trustee of the Trust;
- (b) warrants to the Seller that:
  - (i) the Trust is created validly and is in existence;
  - (ii) the Buyer is the sole trustee of the Trust and has been appointed validly;
  - (iii) the Buyer has full and free power to enter into this Contract and to perform all the obligations imposed upon it under this Contract; and

- (iv) this Contract has been duly authorised, executed and delivered by the Buyer and constitutes and shall constitute a valid legal and binding instrument and that if any consent or approval is required for the Buyer to enter into this Contract or the performance by the Buyer of its obligations under this Contract, it has been obtained;
- (c) acknowledges that:
  - (i) the Buyer accepts and undertakes personal liability under this Contract;
  - (ii) the Buyer must not before the satisfaction of all liability under this Contract, personally and/or by the Trust exercise in its own favour any right of indemnity, lien or charge to which it may be entitled under or in respect of the assets of the Trust; and
  - (iii) if any of the assets of the Trust are at any time in the hands of the Buyer free of their trust character by virtue of the exercise or purported exercise of any such right of indemnity, lien or charge, the Buyer must hold those assets on behalf of the Seller to the extent to which any liability under this Contract has not been satisfied; and
- (d) agrees with the Seller that if at any time before satisfaction of any liability under this Contract:
  - (i) the Buyer ceases for any reason to be the sole trustee of the Trust, the Buyer must procure any new or additional trustee of the Trust to execute in favour of the Seller such covenants relating to this Contract as the Seller may reasonably require, including covenants in like terms to those contained in this **Special Condition 20**; and
  - (ii) it will notify the Seller promptly in writing if the Trust is determined or for any reason ceases to exist.

## 21 Security Interests under the PPSA

The Buyer acknowledges and agrees that:

- (a) the Seller does not have an obligation to provide the Property free from any Security Interest;
- (b) the Seller is not obliged to provide or procure a letter, deed poll or financing charge statement (as that term is defined in the Personal Property Securities Act 2009 (Cth)) confirming the release of the Property or the Seller (or any entity related to the Seller) from a Security Interest at Settlement; and
- (c) the Seller may require Settlement without providing a release of any Security Interest that affects the Property or the Seller (or any entity related to the Seller).

## 22 No Nominee or Agency

### 22.1 Buyer's warranty

- (a) The Buyer warrants that it is purchasing the Land on its own behalf as principal and not as an agent for a third party.

- (b) The Buyer may, with the consent of the Seller, nominate a substitute or additional transferee for the Property. The Seller will not unreasonably withhold its consent to a nomination provided that the Buyer:
- (i) serves the executed and dated nomination form (attached as **Annexure E**) on the Seller at least 14 Days before the Settlement Due Date;
  - (ii) is not and has not been in default under this Contract;
  - (iii) satisfies the Seller that the nominee is either a:
    - (A) husband (including de facto), wife (including de facto), mother, father, brother, sister, son or daughter; or
    - (B) company of which the Buyer is either a trustee or a director or shareholder who controls more than 50% of the shares of that company; or
    - (C) custodian or trustee relating to the Buyer's superannuation fund or family trust; and
  - (iv) delivers to the Seller:
    - (A) the executed and dated nomination form as set out in **Special Condition 22.1(b)(i)**
    - (B) in a case where the nominee purchaser is or includes a company which is not listed on the official list of Australian Stock Exchange Limited (ACN 008 624 691), a guarantee and indemnity executed by the directors of the nominee purchaser in the form of the guarantee in **Annexure E**, except for any changes necessary due to the nomination, guaranteeing the obligations of the Buyer and the nominee purchaser;
    - (C) a written acknowledgment from each existing Guarantor that the nomination of the nominee does not vitiate the Guarantor's obligations;
    - (D) a copy of any form required by the State Revenue Office;
    - (E) if the nominee is a company as referred to in **special condition 22.1(b)(iii)(B)**, satisfactory evidence that the Buyer is either a trustee or a director or shareholder who controls more than 50% of the shares of that company;
    - (F) if the nominee is a custodian or trustee as referred to in **special condition 22.1(b)(iii)(C)**, satisfactory evidence that it relates to the Buyer's superannuation fund or family trust; and
  - (v) satisfies the Seller that the nominee is not a foreign person within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- (c) Despite any nomination, the named Buyer in the Particulars remains personally liable to the Seller for the due performance of the obligations of the Buyer under this Contract.

## 22.2 Acknowledgement

- (a) Nothing in this **Special Condition 22** constitutes or is otherwise intended to give rise to a binding agreement for the sale of the Property to the nominee until the Seller provides its consent in accordance with this **Special Condition 22**.
- (b) If the Buyer purports to nominate under this Contract but provides incomplete documents, documents with errors or does not otherwise comply with the

requirements of this **Special Condition 22** (including the requirement to nominate at least 10 Business Days before the Settlement Due Date, the Buyer will be in breach of this Contract and must pay the amount of \$330 (inclusive of GST) to the Seller's Solicitors being the costs associated with advising the Seller in relation to the Buyer's breach.

## 23 Foreign Investment Review Board

- (a) The Buyer warrants that the provisions of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) do not apply to the Buyer or to this purchase.
- (b) The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Seller suffers as a result of a breach of the warranty contained in **Special Condition 23(a)**.

## 24 Foreign resident capital gains withholding payments

- (a) This **Special Condition 24** applies if the Purchase Price is equal to or greater than \$750,000 (or such other threshold prescribed in the TA Act from time to time).
- (b) In this **Special Condition 24**, terms have the following meanings:
  - (i) **Clearance Certificate** means a certificate in respect of the Seller given by the Commissioner under section 14-220 of Schedule 1 of the TA Act;
  - (ii) **Variation** means a variation made by the Commission under section 14-235(2) of Schedule 1 of the TA Act; and
  - (iii) **Withholding Amount** means the amount that the Buyer is required to pay the Commissioner under section 14-200(3) of Schedule 1 of the TA Act.
- (c) The Seller may serve a Clearance Certificate or a Variation.
- (d) If a Clearance Certificate is included in the Disclosure Materials or the Seller provides a Clearance Certificate to the Buyer (or the Buyer's Solicitor) no later than 2 Business Days before the Settlement Date then the Buyer must not at Settlement retain or withhold any amount of the Purchase Price for the purposes of Subdivision 14-D of Schedule 1 of the TA Act.
- (e) If the Seller serves a Variation no later than 2 Business Days before the Settlement Date then the Buyer must at Settlement only retain or withhold the amount specified in the Variation for the purposes of Subdivision 14-D of Schedule 1 of the TA Act.
- (f) If the Seller does not provide a Clearance Certificate under **Special Condition 24(d)** then the Buyer must:
  - (i) serve evidence of a Buyer payment notification to the Australian Taxation Office within 5 Business Days after the Settlement Date;
  - (ii) at Settlement, produce a settlement cheque in favour of the Commissioner for the Withholding Amount;
  - (iii) immediately following Settlement deliver that settlement cheque to the Commissioner; and
  - (iv) serve evidence of receipt by the Commissioner of payment of the Withholding Amount within 5 Business Days after the Settlement Date.

## 25 Privacy Act

- (a) The Buyer consents to:
  - (i) the collection of Personal Information;
  - (ii) the use and disclosure by the Seller of Personal Information for the purposes of enabling the Seller to comply with its obligations under, associated with and arising in connection with this Contract, including any obligations to any third parties, such as the financiers of the Seller;
  - (iii) the disclosure to, and use by, third party contractors and service providers engaged by the Seller of the Personal Information for the purpose of:
    - (A) enabling the Seller to comply with its obligations under, associated with and arising in connection with this Contract;
    - (B) procuring the provision to the Buyer of products and services contemplated by this Contract; and
    - (C) the use and disclosure by the Seller of Personal Information for the purposes of enabling the Seller to enforce its rights under this Contract, for disclosure to and use by owners of land adjoining the Property to assist such adjoining owners to comply with their obligations for development, fencing or other work that such adjoining owners may require to undertake; and
  - (iv) the disclosure, and use, of Personal Information in other circumstances where the Seller or any related entity is legally entitled, obliged or required to do so, including any disclosure which is permitted or authorised under the Privacy Act.
- (b) The Buyer acknowledges that:
  - (i) the Personal Information is held by the Seller subject to the requirements of the Privacy Act and accordingly the Buyer may request access to Personal Information at any time; and
  - (ii) the Buyer may request that Personal Information be corrected and should do so by contacting the Seller's privacy officer.

## 26 Online Duties Form

### 26.1 Buyer's acknowledgement

The Buyer acknowledges that in order for the duty on the instrument of transfer to be assessed, the State Revenue Office requires the information which must be submitted to the State Revenue Office for that purpose, to be completed and signed online by both parties, and submitted to the State Revenue Office electronically by means of the Online Duties Form.

### 26.2 Buyer must complete the Online Duties Form

- (a) To ensure that the Online Duties Form is completed and signed in time for Settlement, the Buyer must:
  - (i) populate the Online Duties Form with all the information which a purchaser must provide to the State Revenue Office (**Transferee Information**); and
  - (ii) accept and/or sign the Online Duties Form,

in each instance, within 2 Business Days of receiving an online invitation to do so. The Buyer must promptly notify the Seller that the Buyer has completed, and/or accepted and/or signed the Online Duties Form immediately after doing so.

- (b) If the Buyer fails to comply with **Special Condition 26.2(a)**, the Buyer is in default under this Contract.
- (c) In addition to the Seller's rights described elsewhere under this Contract, if the Buyer breaches the Buyer's obligations under **Special Condition 26.2(a)**:
  - (i) the Seller may extend the Settlement Due Date by the same number of days in which the Buyer delays populating, or accepting and/or signing the Online Duties Form; and
  - (ii) the Buyer is taken to have defaulted in payment of the Balance of the Price and must, at Settlement, pay default interest under this Contract to the Seller from the original Settlement Due Date until the Settlement Date.
- (d) The Buyer confirms and agrees that upon the Online Duties Form being populated with the Transferee Information, the Buyer must not amend any of the Transferee Information without procuring the Seller's prior written consent to do so.
- (e) The Buyer acknowledges that the Buyer is responsible for populating the Online Duties Form with accurate Transferee Information.

## 27 Electronic conveyancing

### 27.1 E-conveyancing definition

In this **special condition 27**:

- (a) **ECNL** means the Electronic Conveyancing National Law (Victoria) under the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW);
- (b) **Electronic Settlement** means settlement of this Contract in accordance with **special condition 27.3**; and
- (c) **Electronic Workspace** means an electronic environment for the exchange of information, communications and notices between parties to the workspace, for the purposes of effecting electronic transactions in accordance with this **special condition 27**, the ECNL and any requirements of the ELN.

### 27.2 Trigger for Electronic Settlement

- (a) **Special Condition 27.3** only applies if:
  - (i) this Contract specifies; or
  - (ii) the Seller makes an election by giving the Buyer written notice prior to the Settlement Date,  
  
that Settlement will be conducted electronically in accordance with the ECNL.
- (b) The Buyer or the Buyer's Solicitor must notify the Seller's Solicitor's in writing within 10 days before the Settlement Due Date whether it reasonably believes that Settlement and lodgement can no longer be conducted electronically in accordance with the ECNL.

- (c) If the Seller agrees with the Buyer or the Buyer's Solicitor that Settlement and lodgement cannot be conducted electronically in accordance with the ECNL, **Special Condition 27.3** does not apply.

### **27.3 If triggered, the conditions for Electronic Settlement**

- (a) The parties agree to do all things reasonably necessary to effect an Electronic Settlement, including:
  - (i) making any necessary variations to this Contract;
  - (ii) being or engaging a representative who is a subscriber for the purposes of the ECNL, and ensuring that all third parties introduced to the transaction under this Contract by it do the same;
  - (iii) conducting Settlement in accordance with the requirements of:
    - (A) the operator of the ELN;
    - (B) the ECNL;
    - (C) the Seller; and
    - (D) any other relevant law;
  - (iv) enabling the relevant documents to be lodged by means of the ELN in the form approved by the Registrar;
  - (v) enabling the Seller to create an Electronic Workspace; and
  - (vi) enabling the Seller to populate all fields required to be populated by the Seller in the Electronic Workspace,on or before the Settlement Due Date.
- (b) The parties' obligations under **Special Condition 27.3(a)** include using reasonable endeavours to compel their respective:
  - (i) financiers;
  - (ii) subscribers (within the meaning of the ECNL); and
  - (iii) any other relevant parties that are required to be a party to the ELN to effect Electronic Settlement,to do all things reasonably necessary to effect Electronic Settlement.
- (c) If the Buyer or the Buyer's subscriber amends any fields or documents within the Electronic Workspace on or one day prior to the Settlement Due Date that subsequently requires the Seller or the Seller's Solicitors to re-populate or re-sign any field or document in the Electronic Workspace, the Buyer is in breach of this Contract and the Seller will be entitled (in its absolute discretion) to delay settlement until such time as the relevant field or document can be re-populated or re-signed.
- (d) Despite any other provision of this Contract, the service of notices and any written communications in respect of the Electronic Settlement must not occur through the Electronic Workspace unless initiated by and agreed to in writing by the Seller.
- (e) The parties agree that:
  - (i) Electronic Settlement has occurred when the Electronic Workspace records that the exchange of funds or consideration between the parties (or their financial institutions) has been "disbursed" in accordance with the parties' instructions and this Contract; and



- (ii) if Electronic Settlement does not occur on the Settlement Due Date, the parties must do everything reasonably necessary to effect:
  - (A) Electronic Settlement on the next Business Day; or
  - (B) by mutual agreement, Settlement (by non-electronic means) as soon as reasonably practicable.
- (f) If an exchange of funds contemplated in **Special Condition 27.3(e)(i)** does not occur in accordance with the parties' instructions, each party must do everything reasonably necessary to assist the other party in tracing and recovering any mistaken payment.
- (g) Despite any other provision of this Contract, the Buyer must reimburse the Seller at Settlement for any fee charged by the operator of the ELN to effect the Electronic Settlement.
- (h) To the extent of any inconsistency, this **Special Condition 27** has priority over any other special condition in this Contract.

#### **27.4 Other Documents**

- (a) The parties must on or before Settlement deliver any documents or things that cannot be delivered through Electronic Workspace to the Seller's Solicitor.
- (b) The Seller's Solicitor:
  - (i) holds those items delivered pursuant to **Special Condition 27.4(a)** on completion in escrow for the benefit of; and
  - (ii) must as soon as reasonably possible after Settlement deliver the documents or things to, or as directed by,  
the party entitled to them.

#### **27.5 Computer system failure**

If, by reason of an electronic or computer system failure at any of the Registrar of Titles, the Reserve Bank of Australia, the Seller's Solicitor or the ELN, Settlement does not occur on the Settlement Due Date, the failure to settle will not constitute a breach or default by either party under this Contract.

## **28 Design Guidelines and Construction of House**

### **28.1 Buyer's acknowledgements and agreement**

- (a) The Buyer acknowledges and agrees:
  - (i) that the Property forms part of the Development Site which may be a large or multi-staged residential development;
  - (ii) the sale of the Property is subject to any restrictions and requirements contained in the Design Guidelines;
  - (iii) it has read the Design Guidelines and agrees to be bound by them (including any changes to the Design Guidelines) as if they were set out in this Contract in full;
  - (iv) the Design Guidelines may affect the location, method of construction and design of any dwelling and other improvements on the Land and that, prior to

the Contract Date, the Buyer has satisfied itself in all respects about any such affectation;

- (v) that it will not subdivide the Land without the Seller's prior written consent;
  - (vi) it must not erect a sign on the Land advertising the Land for sale at any time before the completion of the construction of the House on the Land; and
  - (vii) that the Seller may, in its absolute discretion, vary, relax, waive or choose not to enforce any of the requirements under the Design Guidelines in relation to any land in the Development Site.
- (b) The Buyer acknowledges the Seller's rights under this **Special Condition 28.1** and must not make any Buyer Claim in respect of any matter referred to in this **Special Condition 28.1**.

## **28.2 Construction of a House**

The Buyer must:

- (a) in constructing the House, comply with all conditions and requirements imposed by the Council and any other relevant Authority;
- (b) construct the House in accordance with the Design Guidelines; and
- (c) commence construction of the House within 2 years after the Settlement Date.

## **28.3 Community Infrastructure Levy**

The Buyer acknowledges and agrees that:

- (a) the Buyer is liable to pay any community infrastructure levy payable (or similar) in respect of the Land (**Community Infrastructure Levy**);
- (b) the relevant Authority may not grant approval for construction of the House until the Community Infrastructure Levy is paid; and
- (c) if the Community Infrastructure Levy is paid by the Seller prior to Settlement, the Buyer must allow the amount of the Community Infrastructure Levy as an adjustment in favour of the Seller at Settlement.

## **28.4 Buyer's on sale**

The Buyer must not sell, transfer or otherwise dispose of the Land without first delivering to the Seller a deed which has been signed by the buyer or transferee in favour of the Seller and under which that buyer or transferee agrees to comply with the Design Guidelines and any of the Buyer's obligations under this **Special Condition 28** that have not been fulfilled as at the date of the sale, transfer or disposal of the Land.

## **28.5 No liability**

The Buyer acknowledges that the Seller's (or any committee or approving entity constituted under the Design Guidelines) receipt or review of, comment or failure to comment upon, or approval or refusal of approval to any part of the design, location or construction methodology of a dwelling or other facilities on the Land will not:

- (a) alter the Buyer's responsibility for:
  - (i) compliance with the Design Guidelines and this Contract;
  - (ii) any errors or omissions in the design or construction methodology; or
  - (iii) any failure of the design documentation or works on the Land to comply with the requirements of the Design Guidelines and this Contract; or

- (b) entitle the Buyer to any Buyer Claim against the Seller.

## **28.6 Buyer's breach**

The Buyer agrees that if the Buyer breaches the Buyer's obligations under this **Special Condition 26**:

- (a) damages or compensation may be an inadequate remedy to the Seller;
- (b) the Seller is entitled to seek injunctive relief against the Buyer; and
- (c) the Buyer must pay on demand the Seller's costs (including legal costs on a full indemnity basis) if the Seller:
  - (i) takes any action against the Buyer; or
  - (ii) is subject to a claim, action, demand or proceeding brought by a third party, in any way relating to the Buyer's breach of its obligations under this **Special Condition 26** or the Buyer's failure to comply with the Design Guidelines.

## **29 Section 173 Agreements**

### **29.1 Acknowledgement**

The Buyer acknowledges and agrees that:

- (a) Council may require the Seller to enter into one or more agreements under section 173 of the *Planning and Environment Act 1987* (Vic) pursuant to a planning permit (if any) or as otherwise required by an Authority (**Section 173 Agreements**);
- (b) it is the intention of the Seller as at the Contract Date that the Section 173 Agreements will not contain material obligations that bind the Buyer; and
- (c) if the Section 173 Agreements are registered on the title to that part of the Site which includes the Property, the Seller will use reasonable endeavours to have the Section 173 Agreement removed from the title to the Property prior to Settlement.

### **29.2 Appointment of attorney**

The Buyer for valuable consideration (receipt of which is acknowledged by the Buyer) irrevocably appoints the Seller as the Buyer's attorney to agree in the Buyer's capacity as owner of the Property to:

- (a) amendments to the Section 173 Agreements and to execute any deed effecting any such amendment; and
- (b) do all things necessary to enable the Section 173 Agreements to be registered on the title to the Site (or part of the Site) when requested in writing to do so by the Seller or the Seller's Solicitors.

### **29.3 Buyer's obligation**

The Buyer must do all things necessary to enable the Section 173 Agreements to be registered on the title to the Site (or part of the Site) when requested in writing to do so by the Seller or the Seller's Solicitors.

### **29.4 Buyer Claim**

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this **Special Condition 29**.

## 30 Vehicle crossover

### 30.1 Acknowledgment

The Buyer acknowledges that:

- (a) the Seller shall construct a vehicle crossover to allow the Buyer to access the Property (**Vehicle Crossover**) at the Seller's cost unless **Special Condition 30.3** applies.
- (b) the proposed location of the Vehicle Crossover is shown on the engineering plan contained in the Disclosure Materials, subject to change without notice by the Seller in its absolute discretion.

### 30.2 Relocation prior to construction

- (a) The Buyer acknowledges that if the Buyer wants the Vehicle Crossover relocated to a different location before any construction of the Vehicle Crossover takes place, the Buyer must:
  - (i) obtain written approval of the Seller whose consent may be withheld acting reasonably at least 60 days before construction of the Vehicle Crossover is anticipated to take place; and
  - (ii) pay a fee determined by the Seller (acting reasonably) from time to time having regard to the nature of the request and anticipated time required by the Seller to make a determination.
- (b) Notwithstanding **Special Condition 30.2(a)**, the Buyer acknowledges that the Seller may in its absolute discretion construct the Vehicle Crossover in the proposed location referred to in **Special Condition 30.1(b)**.

### 30.3 Relocation after construction

- (a) The Buyer acknowledges that if the Buyer wants the Vehicle Crossover relocated to a different location after construction of the Vehicle Crossover has commenced, the Buyer must:
  - (i) obtain written approval of the Seller whose consent may be withheld acting reasonably;
  - (ii) pay a fee determined by the Seller (acting reasonably) from time to time having regard to the nature of the request and anticipated time required by the Seller to make a determination;
  - (iii) apply, at its cost, to the relevant Authority for the relevant permits and approvals (**Post-Construction Application**);
  - (iv) provide written notice to the Seller of the Post-Construction Application and provide such other information as the Seller may request (acting reasonably) from time to time; and
  - (v) notify the Seller immediately on notification that the Post-Construction Application has been approved.
- (b) The Buyer acknowledges that, if the Buyer obtains approval to relocate the Vehicle Crossover in accordance with **Special Condition 30.3(a)**, the Buyer must:
  - (i) not commence construction of the new vehicle crossover (**Crossover Works**) until after the Settlement Date which are to be at the Buyer's cost; and

- (ii) remove, at its cost, the existing Vehicle Crossover as soon as reasonably practicable after completion of the Crossover Works including reinstating the kerb in accordance with the standards set by the relevant Authority.

## 31 Geotechnical conditions

### 31.1 Acknowledgement

- (a) The Seller agrees to provide to the Buyer a geotechnical conditions report (**Report**) and will use reasonable endeavours to provide the Report within 60 days after the Settlement Date.
- (b) The author of the Report is solely responsible for the representations and warranties in relation to the soil conditions and other information contained in the Report and the Seller shall not have any liability to the Buyer in respect of such matters.

### 31.2 Buyer Claim

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 31**.

## 32 Television acknowledgement

### 32.1 Television and pay TV

The Buyer acknowledges and agrees that:

- (a) the Buyer may need to install a television antenna for 'free to air' television or pay TV within or on top of the roof of the Property in compliance with the Design Guidelines;
- (b) all costs associated with access and connection to pay TV are at the Buyer's expense and must be in compliance with the Design Guidelines;
- (c) it is the intention of the Seller that pay TV services will be provided to the Property however the availability, provision or timing for provision (if applicable) of a pay TV service is dependent on third party network providers and is not guaranteed by the Seller;
- (d) in relation to any television to be used on the Property, the Buyer may be required to:
  - (i) arrange a technician to re-tune a television;
  - (ii) for analogue televisions, connect a digital set top box (that suits the television's specifications) to each television in the Property;
  - (iii) purchase additional equipment and arrange a technician to fit the equipment;  
or
  - (iv) purchase a new television;

in order to ensure that the television is compatible with the optic fibre infrastructure.

### 32.2 Buyer Claim

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 31.2**.

## 33 Supply of Services

### 33.1 Acknowledgements

- (a) The Buyer acknowledges and agrees that:

- (i) it is intended that the infrastructure for the Services will be provided at or near the boundary of the Property (**Connection Point**) but the Property may not benefit from a supply of any one or more of those Services at the Settlement Date;
  - (ii) the availability, provision and timing of supply of the Services is dependent on third party providers being willing and able (at their cost) to provide and install the necessary infrastructure and enter the appropriate agreements with relevant suppliers and the Seller makes no warranties or representations in respect of such matters;
  - (iii) it is the Buyer's sole responsibility to carry out the necessary works to connect the infrastructure for the Services from the Connection Point to the dwelling (including any pipes, wiring and meters);
  - (iv) the Buyer is liable for any fees with respect to being able to access the supply of the Services;
  - (v) it is the Buyer's sole responsibility to ensure that any improvements on the Property are designed, constructed and wired to be compatible with the Services provided via the infrastructure for the Services; and
  - (vi) if the Buyer requires supply of any one or more Services to commence construction of a dwelling prior to supply of the relevant Service being available via the infrastructure for the Services, the Buyer, at its cost, must provide or procure a temporary supply of the relevant Services for the period prior to the supply being available via the infrastructure for the Services.
- (b) The Buyer agrees that it must not make any representation to any third parties including any Authority in relation to any matters contemplated by this **special condition 32.2** which may in the opinion of the Seller have an adverse effect on the Seller.
  - (c) The Buyer waives its rights and releases the Seller to the full extent permitted by law from all Claims that it may have against the Seller in relation to the matters set out in this **Special Condition 32.2**.

### **33.2 Buyer Claim**

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 32.2**.

## **34 Maintenance of the Property**

- (a) At all times after the Settlement Date, until construction of a House on the Property under **Special Condition 28** is completed, the Buyer must keep the Property clean and tidy and free from debris and in a safe condition.
- (b) If, in the Seller's absolute discretion, the Buyer fails to comply with **Special Condition 34(a)**, the Seller or its agents may enter the Property, without notice to the Buyer and without creating liability for trespass or otherwise, to undertake such works as may be required to ensure that the Property is in the condition required by **Special Condition 34(a)**.

## **35 Stamp Duty and Registration Fees**

The Buyer must pay, and indemnifies the Seller against:

- (a) all stamp duty on this Contract and on any transaction, guarantee, deed or other document contemplated by this Contract; and
- (b) any registration fees relating to the transfer of the Property to the Buyer.

## 36 GST

- (a) In this Contract:
  - (i) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
  - (ii) **GST Law** has the meaning given to that expression in the GST Act;
  - (iii) terms defined in the GST Law have the same meaning in this Contract, unless expressly stated otherwise; and
  - (iv) any clauses in the Standard Form which apply to the treatment of GST on the purchase of the Property are deleted from this Contract.
- (b) The Purchase Price in this Contract is inclusive of GST.
- (c) The parties agree that the margin scheme will apply in working out the amount of GST on the supply of the Property, despite any indication of GST treatment to the contrary elsewhere in this Contract.
- (d) The Buyer acknowledges that, as a result of the margin scheme applying to the supply of the Property, the Buyer is not entitled to receive from the Seller a tax invoice, and is not entitled to an input tax credit for GST paid, in respect of the Buyer's acquisition of the Property.
- (e) The Buyer acknowledges that, unless expressly identified as including GST, the consideration for any supply under or in connection with this Contract (other than the supply of the Property) does not include GST.
- (f) Accordingly the parties agree that:
  - (i) if GST is payable on a supply made under or in connection with this Contract (other than the supply of the Property), the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply (**GST Amount**);
  - (ii) subject to the prior receipt of a tax invoice (other than in respect of the supply of the Property where the margin scheme applies), the GST Amount is payable at the same time that the other consideration for the supply is provided;
  - (iii) if a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within **7 days** after the receipt of a tax invoice;
  - (iv) where any indemnity, reimbursement or similar payment under this Contract is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability; and
  - (v) if an adjustment event occurs in relation to a supply under or in connection with this Contract, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (g) If the Buyer has nominated a substitute or additional Buyer under the Contract, the Buyer must, on and as a condition of Settlement, serve an irrevocable authority

signed by the nominee purchaser on terms required by the Seller's Solicitor to give effect to **Special Condition 47(h)**.

## 37 Notices

### 37.1 General

A notice, communication, demand, consent, request, waiver, agreement or other communication relating to this Contract must be written in English and may be given by an agent of the sender.

### 37.2 How to give a communication

In addition to any other lawful means, a notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address;
- (c) sent to the party's current postal address by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the party's current fax number; or
- (e) emailed to the email address last notified by the addressee.

### 37.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as specified in the Particulars of Sale or special conditions of this Contract and are taken to be the current particulars unless **Special Condition 37.3(b)** applies.
- (b) Each party may change its particulars for delivery of notices by giving notice to each other party and the changed particulars are then taken to be the current particulars.

### 37.4 Communications by post

Subject to **Special Condition 37.7**, a notice is deemed received if posted:

- (a) within Australia to an Australian postal address, three Business Days after the day of posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after the day of posting.

### 37.5 Communications by fax

Subject to **Special Condition 37.7**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### 37.6 Communications by email

Subject to **Special Condition 37.7**, if a communication is emailed, a delivery confirmation report received by the sender, which records the time that the email was delivered to the addressee's current email address is conclusive evidence of its receipt by the addressee, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.

### 37.7 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or



- (b) on a day which is not a business day in the place of receipt,
- (c) it is taken as being given at 9.00 am on the next business day in that place.

## 38 Pre-settlement Inspection

### 38.1 Entitlement to inspection

The Buyer may inspect the condition of the Property at any reasonable time during the period of seven (7) days preceding the Settlement Due Date, but not more than once (**Pre-settlement Inspection**), and on the condition that in exercising its rights under this **Special Condition 38.1**, the Buyer:

- (a) must be accompanied by a customer relations consultant or agent of the Seller;
- (b) must give reasonable prior notice to the Seller of its wish to undertake a Pre-settlement Inspection; and
- (c) acknowledges that failure to undertake a Pre-settlement Inspection must not, in any way, delay Settlement.

### 38.2 Acknowledgement

The Buyer acknowledges that it:

- (a) may not be able to undertake a Pre-settlement Inspection if, in the Seller's absolute discretion, works at the Site render the Pre-settlement Inspection unsafe or undesirable;
- (b) may be required to undertake a Site induction program before conducting the Pre-settlement Inspection;
- (c) must comply with all reasonable requirements of the Seller in relation to the Pre-settlement Inspection including, without limitation, all requirements relating to occupational health and safety; and
- (d) must not make any Buyer Claim if, as a result of **Special Condition 38.2(a)**, **38.2(b)** or **38.2(c)**, the Buyer is not able to undertake a Pre-settlement Inspection.

## 39 Assignment, Novation and Granting of Security

- (a) The Seller discloses and the Buyer is aware that the Seller may assign or novate the Seller's interest in this Contract to a successor in title to the Land, the Development Site or any other land containing the Land. The Buyer cannot make any Buyer Claim in connection with the assignment or novation.
- (b) The Buyer must, if requested to do so by the Seller, promptly enter into a deed with the Seller and the Seller's successor in title on terms reasonably required by the Seller to give effect to the assignment or novation referred to in **Special Condition 39(a)**. The Buyer acknowledges and agrees that such deed may include a release of the Seller from the Seller's obligations under this Contract.
- (c) The Seller discloses and the Buyer is aware that the Seller has granted or may grant a mortgage, charge or other security over the Seller's interest in:
  - (i) the Land;
  - (ii) the Development Site;
  - (iii) this Contract;

- (iv) the Deposit paid under this Contract; and/or
- (v) some or all of the above,

and, if the Seller has done or does do so, the Buyer cannot make any Buyer Claim.

- (d) The Buyer cannot make any Buyer Claim if in connection with the Development Site or the Seller (or both), a person holding a mortgage over the Development Site or security from the Seller becomes a mortgagee in possession or appoints an administrator, receiver, receiver and manager, agent, controller or similar functionary.

## 40 Severance

- (a) Any provision of, or the application of any provision of, this Contract which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Contract which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

## 41 Commercial interests

- (a) The Seller discloses, and the Buyer acknowledges and agrees that all of the provisions in this Contract, including the provisions listed below in **Special Condition 41(b)**, are reasonably necessary to protect the Seller's legitimate interests by providing the Seller with sufficient flexibility in the design, planning, construction and management of the Development due to the Development being at a stage where the Seller has no certainty as to design and construction constraints.
- (b) Without limiting the operation of **Special Condition 41(a)**, the parties agree that the following provisions of this Contract are reasonably necessary to protect the Seller's legitimate interests for the reasons stated in **Special Condition 41(a)**:
  - (i) the Seller's rights to rescind and/or terminate this Contract contained in **Special Conditions 5, 7(b) and 19.1(b)**;
  - (ii) the reservation of the Seller's rights to:
    - (A) make changes to the Plan contained in **Special Condition 9.1**;
    - (B) vary the final location of easements contained in **Special Condition 9.1**;  
and
    - (C) create easements, restrictions on use and other encumbrances contained in **Special Condition 9.2**;
  - (iii) the Seller's and the Builder's rights in connection with Prescribed Activities contained in **Special Condition 13**;
  - (iv) the Seller's rights in relation to Additional Restrictions contained in **Special Condition 9**;
  - (v) the Seller's right to:
    - (A) restrict inspections of the Property in accordance with **Special Condition 38**;

- (vi) the restriction on the Buyer's rights to make Claims, requisitions, rescind or terminate contained in this Contract.

## 42 Works Affecting Natural Surface Level of the Land

- (a) In this **Special Condition 42**:
  - (i) **Plan of Surface Level Works** means any engineering plans for the Plan provided by the Seller and any further plans given by the Seller to the Buyer in relation to the Relevant Provision from time to time, all of which form part of the Disclosure Material.
  - (ii) **Relevant Provision** means section 9AB of the Sale of Land Act.
- (b) The information required to be provided to the Buyer by the Relevant Provision and known to the Seller, is shown on the Plan of Surface Level Works. The Plan of Surface Level Works is expressly provided for the purpose of complying with the Relevant Provision.
- (c) The Seller makes no representation that:
  - (i) the Property is either filled or not filled (except as intended in accordance with the Plan of Surface Level Works) in whole or in part and the Buyer should make its own enquiries with respect to the Property; and
  - (ii) any other works shown on the Plan of Surface Level Works will be constructed as shown.
- (d) The Seller reserves the right to alter any works shown on the Plan of Surface Level Works which the Seller considers is desirable or which is required to satisfy the requirements of an Authority. The Buyer may not make any Buyer Claim for any matter concerning the Plan of Surface Level Works or under the Relevant Provision.
- (e) The Buyer acknowledges and agrees that the Seller does not make any representation as to:
  - (i) the classification of soil used for fill (including any reports on fill levels that may (or may not) be produced by the Seller at any time); or
  - (ii) the physical and/or geotechnical characteristics of the Property,and the Buyer must rely on its own enquires and investigations in respect of such fill classification.
- (f) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in **Special Condition 42**.

## 43 Seller's Undertaking

- (a) For the purposes of this **Special Condition 43, Accepted on Maintenance** means Council has accepted the works bonded by the Seller.
- (b) The Buyer acknowledges that works relating to the construction of the Property may not be complete at Settlement and have been bonded so as to enable the early approval of the Plan by Council. The Buyer agrees not to require the Council (or any private certifier) to give the Buyer a development permit for building work in respect of the Property until the works are completed and Council has Accepted on Maintenance the works relating to the Property.

- (c) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this **Special Condition 43**.

## 44 Seller as Trustee

- (a) The Seller enters into this contract solely in its capacity as trustee of the Officer Property Unit Trust (**Trust**) and in no other capacity.
- (b) 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 the property of the Trust out of which the Seller is actually indemnified for the liability.
- (c) The limitation of the Seller's liability contained in this **Special Condition 44** applies notwithstanding any other provisions of this Contract and extends to all liabilities and obligations of the Seller in connection with this Contract.
- (d) The Buyer may not sue the Seller in any capacity other than as trustee of the Trust, including seeking the appointment to the Seller of a receiver (except in relation to the property of the Trust), a liquidator, administrator or any other similar person.
- (e) The provisions of this **Special Condition 44** will not apply to any liability or obligation of the Seller to the extent there is a reduction in the extent of its indemnification out of the assets of the Trust as a result of the operation of the law or the application of any provision of the Trust's constitution or to the extent the liability arises out of the Seller's own fraud, gross negligence or breach of trust or breach of duty.

## 45 Exclusion from Promotions

- (a) For the purposes of this **Special Condition 45**, **Promotional Offer** means any package, voucher or other offer made available to buyers who proceed with a purchase of a property within the Development.
- (b) The Buyer acknowledges and agrees that at no time was a Promotional Offer made available to the Buyer as a result of the Buyer's purchase or acquisition of the Property or entry into this Contract.
- (c) The Buyer acknowledges and agrees that notwithstanding any Promotional Offer advertised or made available at any time, the Buyer is not entitled to claim or redeem any Promotional Offer.

## 46 Bushfire Prone Area

- (a) The Seller discloses that the Land has been designated by the Victorian Department of Transport, Planning and Local Infrastructure as being within a bushfire prone area.
- (b) The Buyer must carry out a bushfire attack level (**BAL**) rating assessment, prior to undertaking any works, including but not limited to construction and renovation works, on the Land, to determine the type of construction required for any buildings to be erected on the Land and the Buyer should allow for additional building costs.
- (c) Without limiting any other condition in this contract, the Buyer acknowledges and agrees that:

- (i) the Buyer may have to comply with building regulations and standards (including Australian Standard 3959-2009) that regulate construction and renovation works on land in a bushfire prone area;
- (ii) the Buyer must comply with any Additional Restrictions in regards to the BAL standard of the design and construction of the House;
- (d) The Buyer will not make any Buyer Claim due to any matter referred to in this **Special Condition 46**.

## 47 GST Withholding

- (a) If the Seller gives the Buyer a GST Withholding Notice specifying that the Buyer is required to make a payment on account of GST to the Commissioner, then the Buyer must pay the GST Withholding Amount from the balance of the price payable to the Seller on Settlement in accordance with this Special Condition.
- (b) The Seller must give the GST Withholding Notice to the Buyer:
  - (i) on the making of this Contract; and/or
  - (ii) at least 12 business days before Settlement (as may be amended or updated from time to time).
- (c) If **Special Condition 47** applies then, at least 10 business days before Settlement Due Date, the Buyer (or, if a substitute or additional Buyer has been nominated by the Buyer, the substitute or additional Buyer) must provide a written notice to the Seller with:
  - (i) evidence of having lodged a GST Property Settlement Withholding Notification Form with the Commissioner; and
  - (ii) the Buyer's payment reference number and lodgement reference number, on and as a condition of Settlement.
- (d) Subject to **Special Condition 47(e)**, the GST Withholding Amount must be paid by bank cheque as follows:
  - (i) the Buyer must at Settlement, give the Seller a bank cheque drawn in favour of the Commissioner for the GST Withholding Amount;
  - (ii) the bank cheque given to the Seller by the Buyer pursuant to **Special Condition 47(d)(i)** above must not be post-dated, stale or dishonoured on presentation; and
  - (iii) the Seller undertakes to give the bank cheque to the Commissioner, together with the reference details provided by the Buyer under **Special Condition 47(c)**.
- (e) **Special Condition 47(d)** does not apply where Settlement occurs electronically through an ELN and the GST Withholding Amount is paid to the Commissioner through the ELN at or before Settlement.
- (f) If payment of the GST Withholding Amount does not occur in accordance with either of **Special Conditions 47(d)** or **47(e)** then the Seller may delay Settlement until the next business day after the day on which:
  - (i) payment of the GST Withholding Amount has occurred; or

- (ii) the Seller receives the entire purchase price.
- (g) The Buyer must lodge the GST Property Settlement Date Confirmation Form with the Commissioner on or before the Settlement Date and provide evidence of having lodged the form to the Seller at Settlement.
- (h) If the Buyer cannot provide evidence to the Seller at Settlement of having lodged the GST Property Settlement Date Confirmation Form, then in addition to any damages under **Special Condition 47(i)**, the Buyer must give to the Seller at Settlement a written declaration that:
  - (i) confirms that the details provided under **Special Condition 47(c)** are true and correct; and
  - (ii) authorises the Seller and the Seller's solicitor to complete and lodge, on behalf of the Buyer, the GST Property Settlement Date Confirmation Form.
- (i) The Buyer indemnifies the Seller, against all loss that may be incurred by the Seller arising from or in connection with a breach by the Buyer of this **Special Condition 47**.
- (j) The parties must co-operate with each other and take all reasonable steps to comply with their respective obligations under Subdivisions 14-E and 16-C of Schedule 1 to the TA Act including:
  - (i) provision of any information reasonably requested by the other party for the purposes of determining whether a GST Withholding Amount will be payable or for completing any form or making any notification to the Commissioner; and
  - (ii) making any necessary additions or amendments to this Contract to address any requirement under the GST Law or TA Act.

(k) In this **Special Condition 47**, terms have the following meaning:

**Commissioner** means the Commissioner of Taxation.

**TA Act** means the *Taxation Administration Act 1953* (Cth).

**GST Withholding Amount** means the amount that the Buyer is required to withhold on account of GST from the price and pay to the Commissioner as notified by the Seller in the GST Withholding Notice.

**GST Withholding Notice** means notification required under section 14-255 of Schedule 1 to the TA Act to be made on or before the making of the supply which states whether or not the Buyer is required to make a payment on account of GST to the Commissioner and, if so, the amount of the payment.

**GST Property Settlement Date Confirmation Form** means the form that the Buyer must lodge with the Commissioner to confirm Settlement has occurred having previously lodged the GST Property Settlement Withholding Notification Form.

**GST Property Settlement Withholding Notification Form** means the notification that the Buyer is required to make in the approved form under section 16-150(2) of Schedule 1 to the TA Act.

## 48 General

### 48.1 Amendment

This Contract may only be varied or replaced by a document signed by or on behalf of the parties.

### 48.2 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Contract does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 48.3 Rights cumulative

Except as expressly stated in this Contract, the rights of a party under this Contract are cumulative and are in addition to any other rights of that party.

### 48.4 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Contract and to perform its obligations under it.

### 48.5 Governing law and jurisdiction

- (a) This Contract is governed by and is construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts, which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### 48.6 Liability

An obligation, representation, warranty or agreement of two or more persons binds them separately and together.

### 48.7 Counterparts

This Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### 48.8 No set-off, withholding or deductions

The Buyer must make payments under this Contract without set-off, counter claims, conditions, restrictions, withholdings or deductions unless required by law.

### 48.9 Severability

- (a) Subject to **special condition 48.9(b)**, if a provision of this Contract is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Contract.
- (b) **Special condition 48.9(a)** does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this Contract; or
    - (B) the relative commercial or financial positions of the parties; or
  - (ii) would be contrary to public policy.

#### **48.10 Entire understanding**

- (a) This Contract contains the entire understanding between the parties as to the subject matter of this Contract.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Contract are merged in and superseded by this Contract and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
  - (i) affects the meaning or interpretation of this Contract; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

#### **48.11 Continuing obligations**

All rights and obligations of a party which have not been performed at Settlement, are not extinguished or affected by Settlement of this Contract or the transfer of the Property, unless those rights or obligations are specifically waived or released by a document signed by all parties.

#### **48.12 Non-merger**

Any provision of this Contract which can take effect after Settlement does not merge on Settlement and continues to bind the parties.



# Annexure C

## Plan

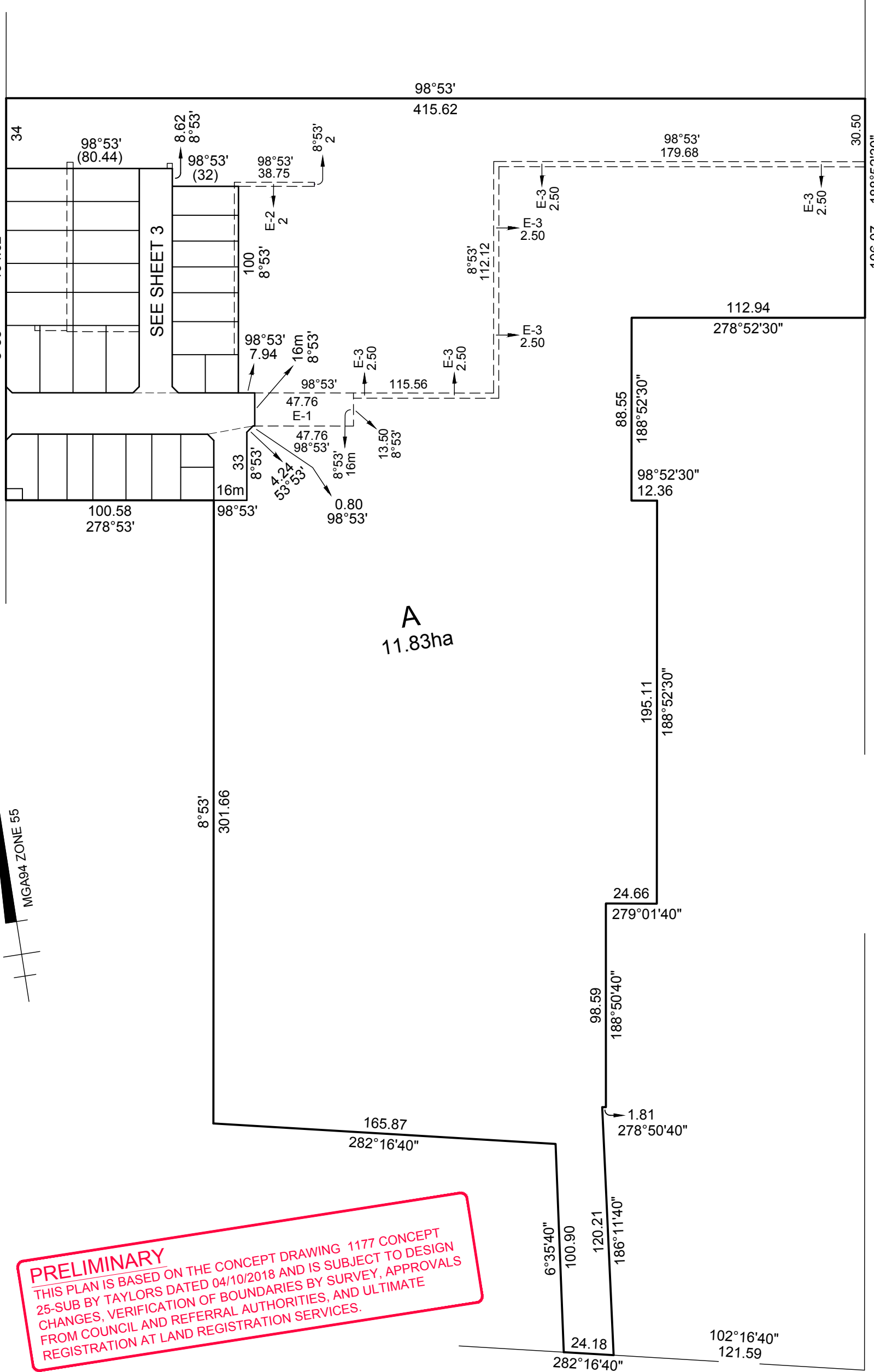
<b>PLAN OF SUBDIVISION</b>		EDITION 1	<b>PS826731D</b>	
<b>LOCATION OF LAND</b> PARISH: <b>PAKENHAM</b> TOWNSHIP: SECTION: CROWN ALLOTMENT: 39A (Part) & 39B (Part) CROWN PORTION: TITLE REFERENCE: Vol. 8314 Fol. 112 Vol. 9542 Fol. 679 Vol. 9535 Fol. 202 LAST PLAN REFERENCE: LOT 1 ON LP48078 LOT 2 ON LP144824 LOT 1 ON TP132216B POSTAL ADDRESS: 46 - 50 BAYVIEW ROAD (at time of subdivision) OFFICER 3809 MGA 94 CO-ORDINATES: E: 360 240 ZONE: 55 (of approx centre of land in plan) N: 5 786 910		COUNCIL NAME: CARDINIA SHIRE COUNCIL		
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
IDENTIFIER	COUNCIL/BODY/PERSON		Lots 101 to 130 (both inclusive) may be affected by one or more restrictions. Refer to Creation of Restrictions A & B on Sheet 4 of this plan for details.	
ROAD R1 RESERVE No.1	CARDINIA SHIRE COUNCIL AUSNET ELECTRICITY SERVICES PTY LTD			
<b>NOTATIONS</b>				
DEPTH LIMITATION: Does Not Apply		<div style="border: 2px solid red; padding: 5px; margin: 10px 0;"> <p style="text-align: center; margin: 0;"><b>PRELIMINARY</b></p> <p style="margin: 0; font-size: 0.8em;">THIS PLAN IS BASED ON THE CONCEPT DRAWING 1177 CONCEPT 25-SUB BY TAYLORS DATED 04/10/2018 AND IS SUBJECT TO DESIGN CHANGES, VERIFICATION OF BOUNDARIES BY SURVEY, APPROVALS FROM COUNCIL AND REFERRAL AUTHORITIES, AND ULTIMATE REGISTRATION AT LAND REGISTRATION SERVICES.</p> </div>		
SURVEY: This plan is based on survey.				
STAGING: This is not a staged subdivision.				
<b>HILLSTOWE ESTATE</b> Area of Release: 1.806ha No. of Lots: 30 Lots and Balance Lot A				
<b>EASEMENT INFORMATION</b>				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	Drainage	See Diag.	This Plan	Cardinia Shire Council
	Sewerage			South East Water Corporation
E-2	Drainage	2m	This Plan	Cardinia Shire Council
E-3	Sewerage	2.50m	This Plan	South East Water Corporation
<div style="border: 2px solid red; border-radius: 10px; padding: 10px; margin: 10px auto; width: 80%;"> <p style="text-align: center; margin: 0; color: red; font-weight: bold;">ADDITIONAL EASEMENTS MAY BE SHOWN ON THIS PLAN ONCE ENGINEERING DESIGN HAS BEEN COMPLETED</p> </div>				
 <b>TAYLORS</b> Urban Development   Built Environments   Infrastructure 8 / 270 Ferntree Gully Road, Notting Hill, Victoria, 3168 Tel: 61 3 9501 2800   Web: taylorssds.com.au		SURVEYORS FILE REF: Ref. 01177-S1 Ver. 2 Licensed Surveyor: RAYMOND LI / Version No 2	ORIGINAL SHEET SIZE: A3	SHEET 1 OF 4

PS826731D

BAYVIEW ROAD

TIVENDALE ROAD

PRINCES HIGHWAY



**PRELIMINARY**  
 THIS PLAN IS BASED ON THE CONCEPT DRAWING 1177 CONCEPT 25-SUB BY TAYLORS DATED 04/10/2018 AND IS SUBJECT TO DESIGN CHANGES, VERIFICATION OF BOUNDARIES BY SURVEY, APPROVALS FROM COUNCIL AND REFERRAL AUTHORITIES, AND ULTIMATE REGISTRATION AT LAND REGISTRATION SERVICES.

<p><b>TAYLORS</b>          Urban Development   Built Environments   Infrastructure          8 / 270 Ferntree Gully Road, Notting Hill, Victoria, 3168          Tel: 61 3 9501 2800   Web: taylorsds.com.au</p>	SCALE <b>1:2000</b>	<p>LENGTHS ARE IN METRES</p>	ORIGINAL SHEET SIZE: A3	Ref. 01177-S1 Ver. 2	SHEET 2
	Licensed Surveyor: RAYMOND LI / Version No 2				

A  
SEE SHEET 2

PS826731D

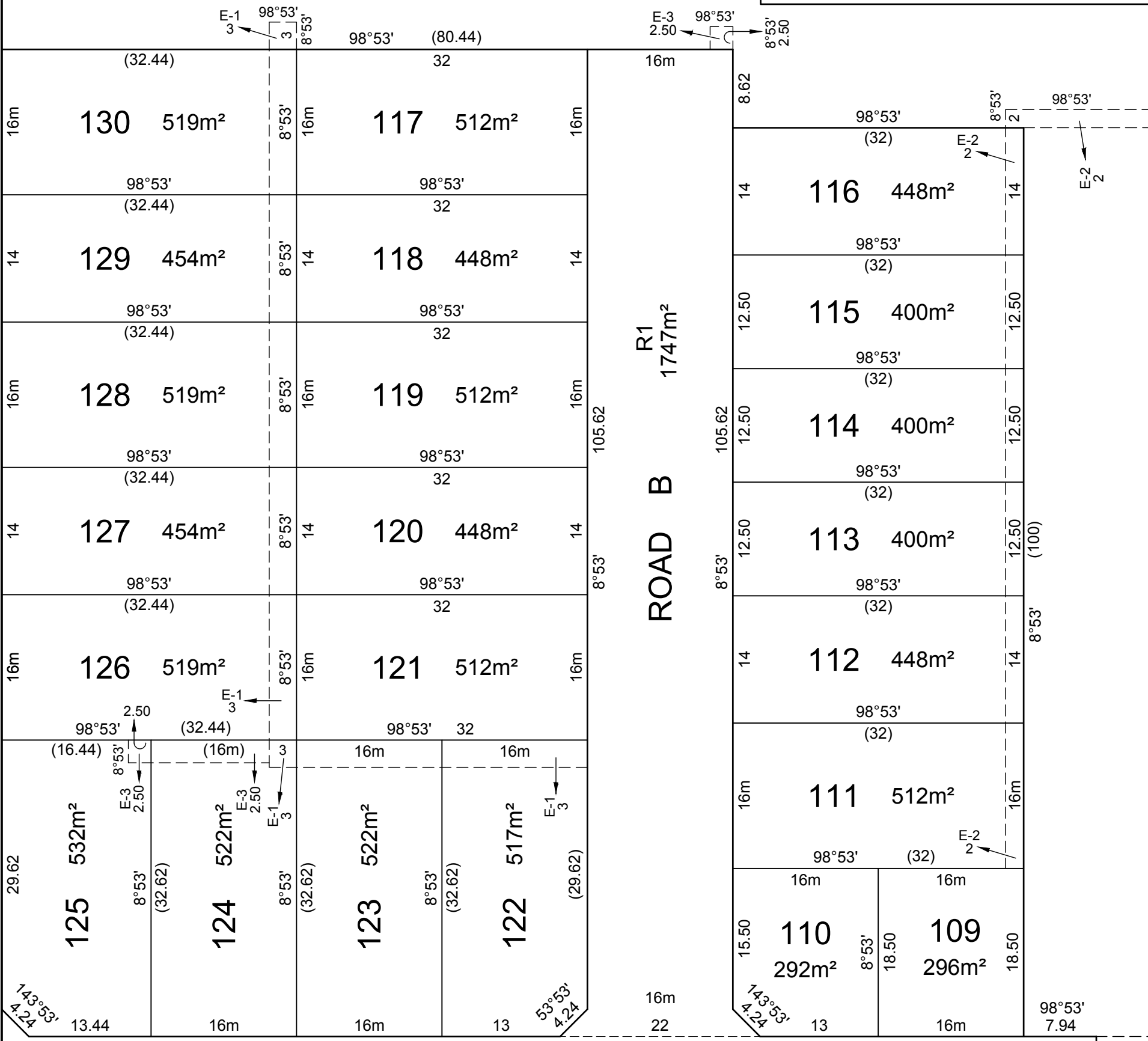
BAYVIEW ROAD

ROAD B  
R1  
1747m<sup>2</sup>

ROAD A  
R1  
2369m<sup>2</sup>

ROAD C  
R1  
553m<sup>2</sup>

RESERVE No. 1  
45m<sup>2</sup>



**PRELIMINARY**  
THIS PLAN IS BASED ON THE CONCEPT DRAWING 1177 CONCEPT 25-SUB BY TAYLORS DATED 04/10/2018 AND IS SUBJECT TO DESIGN CHANGES, VERIFICATION OF BOUNDARIES BY SURVEY, APPROVALS FROM COUNCIL AND REFERRAL AUTHORITIES, AND ULTIMATE REGISTRATION AT LAND REGISTRATION SERVICES.

**TAYLORS**

Urban Development | Built Environments | Infrastructure  
8 / 270 Ferntree Gully Road, Notting Hill, Victoria, 3168  
Tel: 61 3 9501 2800 | Web: taylorsds.com.au

SCALE 1:500  
5 0 5 10 15 20  
LENGTHS ARE IN METRES

Licensed Surveyor:  
RAYMOND LI / Version No 2

ORIGINAL SHEET  
SIZE: A3

Ref. 01177-S1  
Ver. 2

SHEET 3

**CREATION OF RESTRICTION A**

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restriction with the intent that the burden of the restriction runs with and binds the burdened land and the benefit of the restriction is annexed to and runs with the benefited land.

BURDENED LAND: See Table 1  
 BENEFITED LAND: See Table 1

RESTRICTION:  
 The burdened land cannot be used except in accordance with the provisions recorded in MCP .....  
 Expiry date: 31/12/2025

TABLE 1

BURDENED LOT No.	BENEFITING LOTS ON THIS PLAN
101	102
102	101, 103
103	102, 104
104	103, 105
105	104, 106
106	105, 107, 108
107	106, 108
108	106, 107
109	110, 111
110	109, 111
111	109, 110, 112
112	111, 113
113	112, 114
114	113, 115
115	114, 116

TABLE 1 continued

BURDENED LOT No.	BENEFITING LOTS ON THIS PLAN
116	115
117	118, 130
118	117, 119, 129
119	118, 120, 128
120	119, 121, 127
121	120, 122, 123, 126
122	121, 123
123	121, 122, 124
124	123, 125, 126
125	124, 126
126	121, 124, 125, 127
127	120, 126, 128
128	119, 127, 129
129	118, 128, 130
130	117, 129

**CREATION OF RESTRICTION B**

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restriction with the intent that the burden of the restriction runs with and binds the burdened land and the benefit of the restriction is annexed to and runs with the benefited land.

BURDENED LAND: See Table 2  
 BENEFITED LAND: See Table 2

RESTRICTION:  
 Must not build or permit to be built or remain on the lot any building other than a building which has been constructed in accordance with the Small Lot Housing Code (SLHC) incorporated into the Cardinia Planning Scheme unless a planning permit is granted by the Responsible Authority for a building that does not conform with the SLHC.  
 Expiry date: 31/12/2025

TABLE 2

BURDENED LOT No.	SLHC TYPE	BENEFITING LOTS ON THIS PLAN
107	A	106, 108
108	A	106, 107
109	A	110, 111
110	A	109, 111

**PRELIMINARY**

THIS PLAN IS BASED ON THE CONCEPT DRAWING 1177 CONCEPT 25-SUB BY TAYLORS DATED 04/10/2018 AND IS SUBJECT TO DESIGN CHANGES, VERIFICATION OF BOUNDARIES BY SURVEY, APPROVALS FROM COUNCIL AND REFERRAL AUTHORITIES, AND ULTIMATE REGISTRATION AT LAND REGISTRATION SERVICES.



Urban Development | Built Environments | Infrastructure  
 8 / 270 Ferntree Gully Road, Notting Hill, Victoria, 3168  
 Tel: 61 3 9501 2800 | Web: taylorssds.com.au

Licensed Surveyor:

RAYMOND LI / Version No 2

ORIGINAL SHEET  
 SIZE: A3

Ref. 01177-S1  
 Ver. 2

SHEET 4

# Annexure D

## Guarantee

Date: **20**

We,   
 of

(“the Guarantors”)

- 1 **IN CONSIDERATION** of the Seller selling to the Buyer at our request the Property for the price and upon the terms and conditions set out in the contract **DO HEREBY** for ourselves and our respective executors and administrators **JOINTLY AND SEVERALLY COVENANT** with the Seller that if at any time default shall be made in the payment of the deposit or balance or interest or other moneys payable by the Buyer to the Seller under the contract to be performed or observed by the Buyer we will forthwith on demand by the Seller pay to the Seller the whole of such deposit, balance, interest or other moneys which shall then be due and payable to the Seller and will keep the Seller indemnified against all loss of purchase money interest and other moneys payable under the contract and all losses costs charges and expenses whatsoever which the Seller may incur by reason of any default as aforesaid on the part of the Buyer.
- 2 This guarantee shall be a continuing guarantee and shall not be released by any neglect or forbearance on the part of the Seller in enforcing payment of any of the moneys payable under the contract or the performance or observance of any of the agreements obligations or conditions under the contract by a nomination under the contract or by time being given to the Buyer for any such payment performance or observance or by any other thing which under the law relating to sureties would but for this provision have the effect of releasing us our executors or administrators.

Executed as a deed.

**SIGNED, SEALED AND DELIVERED** by )  
 the Guarantor in the presence of: )  
 .....  
 Signature of witness  
 .....  
 Name of Guarantor

**SIGNED, SEALED AND DELIVERED** by )  
 the Guarantor in the presence of: )  
 .....  
 Signature of witness  
 .....  
 Name of Guarantor

# Annexure E

## Nomination Form

### Sale of Real Estate Nomination Form

Relating to a contract between:

**Seller:**

**Buyer:** \_\_\_\_\_ and/or Nominee

**Property:**

**Nominee:** \_\_\_\_\_ of

1. Capitalised terms that are not defined in this deed poll have the same meaning as under the contract between the Seller and the Buyer in relation to the Property (**Contract**).
2. As the Property is expressed as sold to the Buyer "**and/or Nominee**" (or words to like effect) then, under the conditions of the Contract, the Buyer nominates the Nominee as [substitute/additional] purchaser to take a transfer or conveyance of the Property in [substitution for/addition to] the Buyer.
3. The Buyer and the Nominee acknowledge and covenant unconditionally and irrevocably in favour of the Seller that, from the date of this nomination, they will be jointly and severally liable for:
  - a. the due performance of the Buyer's obligations under the Contract;
  - b. payment of any expenses resulting from this nomination (including any duty);  
and
  - c. the indemnity in favour of the Seller set out in paragraph 7.

**Nominee's  
FIRB  
Declaration**

Is the Nominee a "foreign person" for the purposes of the *Foreign Acquisition and Takeovers Act 1975* (Cth)

Yes                       No

4. If the Nominee ticks "No" in the Nominee's FIRB Declaration, the Nominee warrants on the date of this deed poll and again on the Settlement Date that is not a foreign person for the purposes of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**Act**) and that it is not required to give notice to, or obtain approval from, the Treasurer of the Commonwealth of Australia under the Act in respect of the transaction contemplated by this deed poll or the Contract.
5. If the Nominee ticks "Yes" in the Nominee's FIRB Declaration, the Nominee warrants on the date of this deed poll and again on the Settlement Date, that it has obtained FIRB Approval (a copy of which is attached to this deed poll).
6. The warranty in paragraph 4 or 5 (as the case may be) is an essential term and the Nominee and Buyer acknowledge that the Seller has accepted the nomination evidenced by this deed poll in reliance on this warranty.
7. The Nominee and Buyer indemnify the Seller against any Claim suffered or incurred by the Seller in connection with or arising from a breach of the warranty in paragraph 4 or 5 (as the case may be) and acknowledges that, subject to the Sale of Land Act, and without limitation to General Condition 7, the Seller may apply the Deposit in respect of such Claim and the payment of the Balance must be varied by the addition of the amount applied by the Seller in accordance with this paragraph.

**Executed** as a deed poll

**Dated** the \_\_\_\_\_ day of 20 \_\_\_\_\_ .

**Execution by Buyer:**

**Signed** by \_\_\_\_\_ )  
 \_\_\_\_\_ )

.....  
 in the presence of:

.....  
 Signature of witness

.....  
 Signature

.....  
 Name of witness (print)



**Signed by** )

)

.....  
in the presence of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness (print)

**Execution by Nominee:**

**Signed by** )

)

.....  
in the presence of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness (print)

**Signed by** )

)

.....  
in the presence of:

.....  
Signature of witness

.....  
Signature

.....  
Name of witness (print)

# Annexure F

## Park and Recreation Area Plan



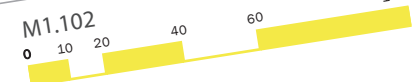
- LEGEND**
- 1 BOULEVARD CONNECTOR  
ACCESS TO SCHOOLS BOTH WAYS
  - 2 POTENTIAL PLAY AREA ADJACENT  
EXISTING TREES PROVIDING  
NATURAL SEATING AND SHADE
  - 3 SECONDARY NODE PROVIDING  
CONNECTION BETWEEN OPEN ACTIVE  
RECREATION AND PLAY AREA
  - 4 OPEN ACTIVE RECREATION SPACE
  - 5 COMMUNITY GATHERING SPACE
  - 6 NODE/STRUCTURE TO CAPTURE VIEWS  
OVER PARK AND TO THE DISTANCE
  - 7 VEGETATED RETARDING BASIN
  - 8 DECIDUOUS TREES
  - 9 EVERGREEN TREES
  - 10

**PLAN E**

**LANDSCAPE ARCHITECTS**  
 414 ROKEBY RD SUBIACO WA 6008  
 T: (08) 9388 9566 E: mail@plane.com.au

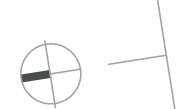
TURNER'S HILL  
 LANDSCAPE MASTERPLAN CONCEPT  
 NOVEMBER 2018

JOB NO. 1830901  
 1:1000 @ A1



REV A

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 SHALL REMAIN THE PROPERTY OF  
 PLANE



# Annexure G

## Disclosure Material