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Contract of Sale – Land Bloomdale Estate, Stage 30

Property: Stage 30 Bloomdale Estate, Diggers Rest-Coimadai Road, Diggers Rest VIC
3427

Lot: on plan of subdivision PS821100T (Stage 30)

Avid Property Group Nominees Pty Ltd
ACN 088 212 631

FORM 1
Estate Agents Act 1980

Regulation 5(a)

CONTRACT OF SALE OF REAL ESTATE—PARTICULARS OF SALE

**Part 1 of the standard form of contract prescribed by the
Estate Agents (Contracts) Regulations 2008**

Property Address: Refer - 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 this Contract.

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period

Section 31

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; or
- the Property is more than 20 hectares in size and is used primarily for farming; or
- you and the Vendor 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 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; and
- 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 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

on — / — /2015

REFER - EXECUTION PAGES FOR PURCHASER SIGNING

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 days if none specified).

SIGNED BY THE VENDOR

on — / — /2015

REFER - EXECUTION PAGES FOR VENDOR SIGNING

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.

Vendor Execution

SIGNED BY THE VENDOR

print name of person signing

print name of person signing

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

As attorneys for Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Diggers Rest Trust B under power of attorney dated 17/08/2016

Purchaser Execution

print name of person signing	state nature of authority if applicable (e.g. "director", "attorney under power of attorney")	signature	date

Particulars of sale

VENDORS ESTATE AGENT

MARKETECT (VIC) PTY LTD (ACN 092 977 127)

LIC: 076146L

of Suite 4-6, Level 2, 2 Queen St Melbourne VIC 3000
PO Box 16204 Collins Street West VIC 8007

Reference: Leivett Reynolds

Telephone: 1300 656 011

Email: lreynolds@avidpropertygroup.com.au

VENDOR

Avid Property Group Nominees Pty Ltd ACN 088 212 631 as trustee for the Diggers Rest Trust B
of Suite 6, Level 2, 2 Queen Street Melbourne VIC 3000

VENDOR'S LEGAL PRACTITIONER OR CONVEYANCER

Maddocks of Collins Square, Tower Two, Level 25, 727 Collins Street, Melbourne, Victoria, 3008
Ref: 6001431.029:AMAG Telephone: (03) 9258 3555 Facsimile: (03) 9258 3666
Email: ashlee.magennis@maddocks.com.au

PURCHASER

Name	Address	Telephone	Email

Purchaser's Legal Practitioner or Conveyancer

Name		
Address		
Telephone	Fax	Email

LAND (general conditions 3 & 9)

Lot Plan of Subdivision PS821100T, being the land described in the corresponding certificate of title set out in Schedule 1, and for the avoidance of doubt, excludes any other lot set out in that Schedule and includes all improvements and fixtures.

PROPERTY ADDRESS

The address of the land is Lot on Plan of Subdivision PS821100T, Bloomdale Estate, Diggers Rest-Coimadai Road, Diggers Rest VIC 3427 and as further detailed in Schedule 1.

GOODS SOLD WITH THE LAND (general condition 2.3(f))

(list or attach schedule)

Nil

PAYMENT (general condition 11 and special condition 28(i))

Price \$

Deposit \$ (payable on the day of sale) of which \$ has been paid.

Balance \$ payable at settlement.

GST (general condition 13)

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 -
Refer to Special
Condition 24

SETTLEMENT (general condition 10)

is due on the Settlement Date described in Special Condition 5 and 1.1(ee).

LEASE (general condition 1.1)

At settlement the Purchaser is entitled to vacant possession of the Property unless the words 'subject to lease' appear in this box

in which case refer to general condition 1.1. If 'subject to lease' then particulars of the lease are:

TERMS CONTRACT (general condition 23)

If this contract is intended to be a terms contract within the meaning of the **Sale of Land Act 1962** then add the words **'terms contract'** in this box

and refer to general condition 23 and add any further provisions by way of special conditions

LOAN (general condition 14)

The following details apply if this contract is subject to a loan being approved:

Lender:

Loan amount: \$

Approval date: 21 days from the Day of Sale

SPECIAL CONDITIONS

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

special conditions

If the contract is subject to **'special conditions'** then particulars of the special conditions follow the general conditions.

Schedule 1

Land and Property Address

Lot	Certificate of Title	Address
3007	Volume 12086 Folio 616	114 Madisons Avenue Diggers Rest VIC 3427
3010	Volume 12086 Folio 619	120 Madisons Avenue Diggers Rest VIC 3427
3013	Volume 12086 Folio 622	126 Madisons Avenue Diggers Rest VIC 3427
3016	Volume 12086 Folio 625	132 Madisons Avenue Diggers Rest VIC 3427
3017	Volume 12086 Folio 626	134 Madisons Avenue Diggers Rest VIC 3427
3019	Volume 12086 Folio 628	29 Bluegrass Way Diggers Rest VIC 3427
3027	Volume 12086 Folio 636	4 Bluegrass Way Diggers Rest VIC 3427
3036	Volume 12086 Folio 645	6 Fragrant Crescent Diggers Rest VIC 3427
3037	Volume 12086 Folio 646	9 Fragrant Crescent Diggers Rest VIC 3427
3038	Volume 12086 Folio 647	7 Fragrant Crescent Diggers Rest VIC 3427
3039	Volume 12086 Folio 648	5 Fragrant Crescent Diggers Rest VIC 3427
3041	Volume 12086 Folio 650	136 Madisons Avenue Diggers Rest VIC 3427
3043	Volume 12086 Folio 652	140 Madisons Avenue Diggers Rest VIC 3427
3044	Volume 12086 Folio 653	142 Madisons Avenue Diggers Rest VIC 3427
3045	Volume 12086 Folio 654	144 Madisons Avenue Diggers Rest VIC 3427
3046	Volume 12086 Folio 655	146 Madisons Avenue Diggers Rest VIC 3427
3047	Volume 12086 Folio 656	148 Madisons Avenue Diggers Rest VIC 3427
3049	Volume 12086 Folio 658	147 Madisons Avenue Diggers Rest VIC 3427
3050	Volume 12086 Folio 659	141 Madisons Avenue Diggers Rest VIC 3427
3051	Volume 12086 Folio 660	139 Madisons Avenue Diggers Rest VIC 3427
3052	Volume 12086 Folio 661	137 Madisons Avenue Diggers Rest VIC 3427

FORM 2
Estate Agents Act 1980

Regulation 5(a)

CONTRACT OF SALE OF REAL ESTATE—GENERAL CONDITIONS

**Part 2 of the standard form of contract prescribed by the
Estate Agents (Contracts) Regulations 2008**

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; and
 - (b) any reservations in the crown grant; and
 - (c) any lease referred to in the particulars of sale.
- 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**.
- 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; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) 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) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) 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;
 - (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 a 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 condition 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. 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. 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 interests 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 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 any personal property:
- (a) that:
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5,000 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 a 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 interest 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
 - (b) 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 which are defined in the **Personal Property Securities Act 2009 (Cth)** have the same meaning in general condition 7, unless the context requires otherwise.

8. 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. 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 9.5, 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; 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 between the hours of 10.00 a.m. and 4.00 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) 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 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 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 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. 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 a going concern and the supply (or a 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
 - (b) 'GST' includes penalties and interest.

14. 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. 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. 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. Nominee**
- The purchaser may nominate a substitute or additional transferee, 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. 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.
- 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. 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.

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 those amounts are a charge on the land until payment; and
 - (c) 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 A

Special Conditions

1 Definitions and Interpretation

1.1 Definitions

In this Contract:

- (a) **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:
 - (i) required by an Authority;
 - (ii) required by a condition or an approval of an Authority; or
 - (iii) reasonably and properly required for the Development.
- (b) **Authority** means any government, local government, semi-government, statutory or planning authority, including the Titles Office and the Council.
- (c) **Business Day** means any day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday in the capital city of the Relevant State; or
 - (iii) a day in the period 24 December to 2 January (inclusive).
- (d) **Buyer Claim** means 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.
- (e) **Contract Date** means the date of this Contract as inserted in the Particulars.
- (f) **Council** means the local or municipal council or government with jurisdiction over the Parent Parcel.
- (g) **Default Interest Rate** means 12% per annum.
- (h) **Design Guidelines** mean 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.
- (i) **Development** means the residential estate of which the Property forms part, being developed by the Seller on the Development Site.
- (j) **Development Site** means all land including:
 - (i) the Parent Parcel;
 - (ii) any land identified on the Plan; and
 - (iii) 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.
- (k) **Disclosure Material** means this Contract, including all material attached to this Contract (in addition to that attached in **Annexure B**), the Disclosure Statement (where applicable)

under the Governing Act), the 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.

- (l) **Disclosure Statement** means 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.
- (m) **Governing Act** means:
 - (i) if the Relevant State is Queensland, the *Land Sales Act 1984* (Qld);
 - (ii) if the Relevant State is New South Wales, the *Conveyancing Act 1919* (NSW); and
 - (iii) if the Relevant State is Victoria, the *Sale of Land Act 1962* (Vic).
- (n) **Guarantor** means all the directors of the Buyer.
- (o) **House** means 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) **Land** means the parcel of land sold under this Contract, as identified in the Particulars and Schedule 1 (if applicable).
- (q) **Outgoings** means all outgoing, costs and expenses in respect of the Property and includes Rates and land tax.
- (r) **Parent Parcel** means the larger parcel (or parcels) of land identified on the Plan as:
 - (i) if at the Contract Date there is not a Title, the underlying land from which the Land will be ultimately subdivided; and
 - (ii) if at the Contract Date there is a Title, the underlying land which was subdivided to create, amongst other land, the Land.
- (s) **Particulars** means 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.
- (t) **Personal Information** means all personal information (as defined in the Privacy Act) relating to the Buyer, including all personal information set out in this Contract and otherwise collected by the Seller or on its behalf whether prior to or after the date of this Contract.
- (u) **Plan** means:
 - (i) 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 **Annexure C**; and
 - (ii) if at the Contract Date there is a Title, the Registered Plan attached to this Contract as **Annexure C**.
- (v) **Privacy Act** means the *Privacy Act 1988* (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.
- (w) **Property** means 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.
- (x) **Purchase Price** means the price to be paid for the Property as specified in the Particulars.

- (y) **Rates** means all rates and charges by any competent Authority and includes Council rates, water rates and fire service levies.
- (z) **Registered Plan** means the Plan (as amended, varied or otherwise affected from time to time in accordance with this Contract) as registered at the Titles Office.
- (aa) **Relevant State** means the State in which the Parent Parcel is located.
- (bb) **Security Interest** has the meaning given to that term in the *Personal Property Securities Act 2009* (Cth).
- (cc) **Service** means 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.
- (dd) **Settlement** means completion in accordance with this Contract.
- (ee) **Settlement Date** means the date that is **60 days** after the Contract Date.
- (ff) **Not Used**
- (gg) **Site Conditions** means 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 Services, whether or not they could reasonably have been anticipated at the Contract Date or at any other time.
- (hh) **Solicitor** 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).
- (ii) **Special Conditions** mean the special conditions contained in this **Annexure A** to this Contract.
- (jj) **Standard Form** means the standard terms or general conditions of the Real Estate Institute, Law Institute or Law Society of the Relevant State to which these Special Conditions are annexed, or if no such standard terms and general conditions, then the general conditions contained and in force in this Contract.
- (kk) **Sunset Date** means the date which is 24 months after the Contract Date.
- (ll) **Title** means a separate freehold title for the Land issued by the Titles Office.
- (mm) **Title Encumbrances** means all encumbrances (other than mortgages) which are:
 - (i) registered on the title of:
 - (A) if at the Contract Date there is not a Title, the Parent Parcel at the Contract Date; or
 - (B) If at the Contract Date there is a Title, the Land at the Contract Date;
 - (ii) disclosed or identified on the Plan, including any restrictions on the use of land;
 - (iii) arising by operation of any statute in respect of the Land;
 - (iv) identified or disclosed in the Disclosure Material; or
 - (v) registered in respect of the Land in accordance with this Contract.
- (nn) **Titles Office** means 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:

- (1) the singular includes the plural and vice versa;

- (2) 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;
- (3) a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (9) the word 'includes' in any form is not a word of limitation;
- (10) a reference to a '\$' or 'dollar' is to Australian currency; and
- (11) 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:

- (1) 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
- (2) 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

- (1) 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.
- (2) 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 Service or proposed Service to the Property, being a joint 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 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.
- (3) 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.
- (4) 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 Property Restriction and Objections

- (1) 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 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.
- (2) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in Special Condition 3(1).

4 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:

- (1) 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
- (2) 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; or
 - (v) is deemed or taken under the laws of Australia to be subject to a similar event or to be unable to pay its debts.

5 Settlement

5.1 Settlement requirements

- (1) Settlement of this Contract must take place on the Settlement Date.
- (2) 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 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 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.
- (3) 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.
- (4) 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.

5.2 Seller may extend Settlement Date

The Seller may, in its sole discretion and by written notice to the Buyer, extend the Settlement Date by a period of not more than three months. The Seller may extend the Settlement Date under this Special Condition 5.2 on any number of occasions, provided that the extended Settlement Date is not later than the date that is three months after the original Settlement Date.

6 Not Used

7 Management of the Property

7.1 Seller has no obligations

The Seller is not obliged to:

- (1) clean or tidy the Land;
- (2) remove any rubbish, debris or other items from the Land;
- (3) repair, maintain or replace anything on the Land; or
- (4) 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, prior to Settlement or at all.

7.2 Not Used

8 Alterations to the Plan and Additional Restrictions

8.1 Not Used

8.2 Additional Restrictions

- (1) 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.
- (2) 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.
- (3) 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.

8.3 No Buyer Claim

The Buyer must not make any Buyer Claim in relation to any matter disclosed or mentioned in this Special Condition 8.

9 Services

- (1) The Buyer acknowledges that a 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.
- (2) The Buyer must:
 - (i) take into account the location of any 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 Service, Title Encumbrance or Additional Restriction affecting the Land.

10 Buyer's Acknowledgment

The Buyer acknowledges that 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 the Buyer must not make a Buyer Claim in respect of any of the following:

- (1) redefinition of the boundaries of any lot;
- (2) minor road realignment or dedication of any lot;
- (3) leases, easements or dedications relating to the provision of electricity and the establishment of substations;
- (4) alteration to the lot numbers;
- (5) easements and/or restrictions on use in favour of any Authority, property and/or person but not so as to burden the Land;
- (6) 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
- (7) 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.

11 Estate Development

- (1) 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) further development of surrounding lots or stages may occur after Settlement;
 - (iii) 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
 - (iv) development works may 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.

- (2) 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.

The Seller does not make any representations nor give any assurances as at the Contract Date or at the Settlement Date as to:

- (x) the nature and type of property developed and sold, and the business and activities carried on, within the Development Site;
- (xi) 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);
- (xii) 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**));

- (xiii) 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;
 - (xiv) the manner in which the Development will be carried out; and/or
 - (xv) 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.
- (3) 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 11.

12 Selling and Leasing Activities

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

- (1) conduct selling and leasing activities within the Development Site other than from within the Property;
- (2) 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
- (3) 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.

13 No Caveat

The Buyer must not:

- (1) 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
 - (2) register or attempt to register any other dealing or encumbrance on the title to the Land or the Parent Parcel,
- prior to Settlement.

14 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.

15 Outgoings Adjustments

- (1) The Buyer 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.
- (2) For the purposes of this special condition, 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 Parcel (**Land Tax Assessment**).
- (3) If by Settlement a separate assessment for Outgoings in respect of the Land has issued, then the Outgoings will be adjusted on the basis that the Buyer is responsible for them from the day after Settlement. Outgoings will be adjusted on a paid (and in respect of land tax, proportional) 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 Outgoings when they become due and payable. The Buyer acknowledges that there will be no subsequent readjustment of Outgoings following Settlement.

- (4) If by Settlement a separate assessment for Outgoings 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) land tax will be adjusted based on the proportional land tax stated in the Land Tax Assessment and between the Buyer and the Seller on the basis that the amount to be apportioned between them is the proportion of the proportional land tax equal to the proportion which the surface area of the Property bears to the surface area of the Land that is subject to the Land Tax Assessment.
 - (iv) the Buyer acknowledges that there will be no subsequent re-adjustment of Outgoings on the actual amount assessed or paid; and
 - (v) the payment of any Outgoings assessed on the Property in relation to a period after Settlement is the responsibility of the Buyer.
- (5) The Buyer will not be entitled to make a Buyer Claim, and (apart from the adjustments referred to in this Special Condition 15) 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.
- (6) 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.

16 Guarantee of Corporate Buyer

- (1) 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.
- (2) If the Buyer fails to deliver a guarantee as required under Special Condition 16(1), 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 16(1); and
 - (ii) Settlement.

17 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 17; and
 - (ii) it will notify the Seller promptly in writing if the Trust is determined or for any reason ceases to exist.

18 Security Interests under the PPSA

The Buyer acknowledges and agrees that:

- (1) the Seller does not have an obligation to provide the Property free from any Security Interest;
- (2) 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
- (3) 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). The Seller does not have an obligation to provide the Property free from any Security Interest

19 No Nominee or Agency

- (1) The Buyer warrants that it is purchasing the Land on its own behalf as principal and not as an agent for a third party.
- (2) General Condition 18 is deleted and replaced with:
"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 correctly executed and dated nomination form (attached as **Annexure E**) on the Seller at least **14 days** before the Settlement Date (including providing the nominee's address and contact details in the nomination form);
- (ii) Is not and has not been in default under this Contract; and
- (iii) The Buyer satisfies the Seller that the nominee is either the:
 - (A) Parent;
 - (B) Sibling; or
 - (C) Spouse
 of the buyer, or the nominee is a registered company; and
- (iv) Delivers to the Seller:
 - (A) the executed and dated nomination form as set out in general condition 18(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 D**, 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 statement signed by the Buyer and the nominee purchaser that the *Foreign Acquisitions and Takeovers Act 1975* (Cth) does not apply to the nominee's acquisition of an interest in the Property; and
 - (E) a cheque payable by the nominee to the Vendor's Solicitor for \$320 plus GST, being their costs for advising the Vendor on compliance with this General Condition 18.

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."

20 Foreign Investment Review Board

- (1) 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.
- (2) 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 20(1).

21 Privacy Act

- (1) 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.
- (2) 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.

22 Design Guidelines and Construction of House

22.1 Buyer's acknowledgements and agreement

- (1) 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.
- (2) The Buyer acknowledges the Seller's rights under this Special Condition 22.1 and must not make any Buyer Claim in respect of any matter referred to in this Special Condition 22.1.

22.2 Construction of a House

The Buyer must, in constructing the House:

- (1) comply with all conditions and requirements imposed by the Council and any other relevant Authority; and

- (2) construct the House in accordance with the Design Guidelines.

22.3 Buyer's on-sale

- (1) 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 22 that have not been fulfilled as at the date of the sale, transfer or disposal of the Land.

22.4 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:

- (1) 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
- (2) entitle the Buyer to any Buyer Claim against the Seller.

22.5 Buyer's breach

The Buyer agrees that if the Buyer breaches the Buyer's obligations under this Special Condition 22:

- (1) damages or compensation may be an inadequate remedy to the Seller;
- (2) the Seller is entitled to seek injunctive relief against the Buyer; and
- (3) 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 22 or the Buyer's failure to comply with the Design Guidelines.

22.6 This Special Condition 22 does not merge on the Settlement Date

23 Stamp Duty and Registration Fees

The Buyer must pay, and indemnifies the Seller against:

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

24 GST

- (1) 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 the context requires 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.
- (2) The Purchase Price in this Contract is inclusive of GST.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

25 Assignment, Novation and Granting of Security

- (1) 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.
- (2) 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 25(1). The Buyer acknowledges and agrees that such deed may include a release of the Seller from the Seller's obligations under this Contract.
- (3) 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.

- (4) 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.

26 Severance

- (1) 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.
- (2) 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.

27 Miscellaneous

In addition to the provisions contained elsewhere in this Contract, service of any document under or relating to this Contract is deemed served on a party if the document is sent by facsimile transmission and in such case such document shall be deemed to have been received when the transmission has been completed, except where:

- (1) the sender's facsimile machine indicates a malfunction in transmission or the recipient notifies the sender of an incomplete transmission within 2 hours after the transmission, in which case service is regarded as not having taken place; or
- (2) the transmission is not completed before 5.00 p.m. (addressee's time) on a Business Day, in which case service shall be deemed to have been taken place on the next Business Day and in such case service is regarded as having taken place at 9.00am on the next Business Day.

28 Victoria – Amendments to Standard Form

For all purposes of this Contract, the terms of the Standard Form are amended as follows:

General Condition 1.1 is deleted and replaced with a new General Condition 1.1 on the following terms:

"The Buyer buys the Property subject to:

- (1) the Title Encumbrances;
 - (2) any reservation, exceptions and conditions (if any) in the crown grant;
 - (3) any lease referred to in the Particulars;
 - (4) 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);
 - (5) the requirements of any planning permit or approval affecting the Property; and
 - (6) the Additional Restrictions."
- (2) The warranty described in General Condition 2.1 applies to the form of the Standard Form prior to the deletions and amendments included in this Special Condition 28 and as otherwise set out in this Contract.

- (3) General Condition 2.3(a) is deleted and replaced with a new General Condition 2.3(a) on the following terms:

"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"

- (4) General Condition 7 is deleted.

- (5) General Condition 10.1(b)(i) is deleted and a new General Condition 10.1(b)(i) is inserted on the following terms:

"do all things necessary that are reasonably the responsibility of the Seller to enable the Buyer to become the registered proprietor of the Property; and"

- (6) General Condition 11.6 is deleted and replaced with:

"Without limiting any other rights of the Seller, if the Buyer fails to settle on the Settlement Date or requests an extension to the Settlement Date, the Buyer must pay to the Seller's Solicitor an amount of up to \$500 plus GST representing the Seller's additional legal costs and disbursements."

- (7) General Condition 13 is deleted.

- (8) General Condition 15 is deleted.

- (9) General Condition 20 is deleted.

- (10) General Condition 21 does not apply to a notice, order, demand or levy which reasonably applies to the Seller's obligation to Register the Plan.

- (11) General Conditions 24.4, 24.5 and 24.6 are deleted.

29 Works Affecting Natural Surface Level of the Land

- (1) In this Special Condition 29:

(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 1962 (Vic)*.

- (2) 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.

- (3) 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.

- (4) 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.

- (5) 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.

30 Seller's Undertaking

- (1) For the purposes of this Special Condition 30, **Accepted on Maintenance** means Council has accepted the works bonded by the Seller.
- (2) 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.
- (3) The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this Special Condition 30.

31 Seller as Trustee

- (1) In this special condition 31, **Trust** means:
 - (i) if the Land is any one of Lots 3048 to 3058 (inclusive), Diggers Rest Trust B; or
 - (ii) if the Land is any one of Lots 3001 to 3047 (inclusive), Diggers Rest Trust C.
- (2) The Seller enters into this contract solely in its capacity as trustee of the Trust and in no other capacity.
- (3) 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.
- (4) The limitation of the Seller's liability contained in this Special Condition 31 applies notwithstanding any other provisions of this Contract and extends to all liabilities and obligations of the Seller in connection with this Contract.
- (5) 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.
- (6) The provisions of this Special Condition 31 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.

32 Exclusion from Promotions

- (1) For the purposes of this Special Condition 32, **Promotional Offer** means any package, voucher or other offer made available to buyers who proceed with a purchase of a property within the Development.
- (2) 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.

- (3) 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.

33 Bushfire Prone Area

- (1) 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.
- (2) 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 building to be erected on the Land and the Buyer should allow for additional building costs.
- (3) 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.
- (4) The Buyer will not make any Buyer Claim due to any matter referred to in this Special Condition 33.

34 Electronic Conveyancing

- (1) In this Special Condition:
 - (a) **E-Conveyancing Variations** means variations effected to the General Conditions to allow for an Electronic Settlement to occur;
 - (b) **Election Date** means the date (if any), prior to settlement, on which the Seller elects to effect an Electronic Settlement;
 - (c) **Electronic Settlement** means settlement of a conveyancing transaction by the use of an Electronic Lodgement Network within the meaning of the ECNL operated by an ELNO;
 - (d) **ECNL** means the Electronic Conveyancing National Law Victoria;
 - (e) **ELNO** means Electronic Lodgement Network Operator within the meaning of the ECNL;
 - (f) **Settlement Parties** means the Seller, Buyer, their respective financiers (if any) and any other parties that are required to be a party to the ELN to effect settlement.
- (2) If, prior to settlement, the Seller elects to effect an Electronic Settlement the Buyer agrees to act in good faith to do all things necessary to give effect to an Electronic Settlement including:
 - (i) subject to Special Condition 34(3), making any necessary variations to this Contract to effect an Electronic Settlement;
 - (ii) signing all necessary documents and compelling the Settlement Parties to do so;
 - (iii) reimbursing the Seller at settlement any fee charged by the ELNO to effect an Electronic Settlement; and

- (iv) complying with any requirements of the ECNL and an ELNO and compelling the Settlement Parties to do so.
- (3) If an Election Date occurs the Seller and Buyer agree that the variations required to this Contract as contemplated by Special Condition 34(2)(i) will be:
 - (i) the E-Conveyancing Variations in their proposed form as at the Election Date; and
 - (ii) any further variations required by the Seller (acting reasonably) to effect an Electronic Settlement.

35 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 at least 12 business days before Settlement.
- (c) If **Special Condition 35(a)** applies then at least 10 business days before Settlement the Buyer must provide to the Seller:
 - (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.
- (d) Subject to **Special Condition 35(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 35(d)** 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 35(c)**.
- (e) **Special Condition 35(d)** does not apply where Settlement occurs electronically through Property Exchange Australia or other similar online conveyancing facility and the GST Withholding Amount is paid to the Commissioner through that facility.
- (f) If payment of the GST Withholding Amount does not occur in accordance with either of **Special Conditions 35(d) or 35(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 35(i)**, the Buyer must give to the Seller at Settlement a written declaration that:

- (i) confirms that the details provided under **Special Condition 35(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 35**.
- (j) In this **Special Condition 35**, 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 Buyer 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.

36 Fencing Works

- (1) In this Special Condition 36, **Fencing Works** means the fencing works to be carried out in accordance with the Design Guidelines.
- (2) The Buyer acknowledges and agrees that:
- (i) the Seller may undertake the Fencing Works on the Land prior to the Settlement Date;
 - (ii) if the Seller undertakes the Fencing Works, the Buyer must reimburse the Seller for fifty per cent of the costs of the Fencing Works by way of an adjustment in the Seller's favour at settlement; and
 - (iii) If, before the Settlement Date, the Seller receives one or more fencing notices from the owners of land adjoining the Land:
 - (A) the Seller and the Buyer will each be liable for half of the cost set out in each of the fencing notices; and
 - (B) the Buyer will pay to the Seller on the Settlement Date half of the cost set out in each of the fencing notices by way of reimbursement for the contribution which the Seller will be required to make under the fencing notices.
- (3) If the Seller does not complete the Fencing Works before the Settlement Date:

- (i) the Buyer must undertake the Fencing Works on the Land;
 - (ii) the Buyer indemnifies the Seller from any claims resulting from the Fencing Works; and
 - (iii) except as otherwise provided in this Contract, the Buyer agrees with the Seller that the Buyer will not make any claim against the Seller for any contribution to the cost of undertaking the Fencing Works or any other types of fencing on any other part of the Land pursuant to the provisions of the Fences Act 1968, including any sums for liabilities which the Seller may (whether or not it is aware of any) have incurred with any adjoining owners.
- (4) The Buyer acknowledges that it buys the Land subject to this Special Condition 36 and will not make any requisition, objection or exercise the Buyer's Rights in respect of any matter referred to in this Special Condition.

37 Rainwater tanks

The Buyer acknowledges and agrees that:

- (1) an Authority will require a rainwater tank to be installed at the Land as part of the construction of a House on the Land after the Settlement Date;
- (2) the following tank sizes will be required:
 - (i) Land smaller than 300m² is not required to have a rainwater tank;
 - (ii) Land between 300m² – 399m² must have a 1,000L tank;
 - (iii) Land between 400m² – 499m² must have a 2,000L tank; and
 - (iv) Land larger than 500m² must have a 3,000L tank;
- (3) the Purchaser must comply with any guidelines, requirements or recommendations issued by any Authority in respect of use of the rainwater tank and any other item arising from any water management strategy; and
- (4) the Design Guidelines will be amended to include the requirements of this special condition 37.

38 Electronic Exchange

- (1) This special condition applies if this Contract was "electronically exchanged".
- (2) The Seller and Buyer acknowledge and agree that this Contract has been entered into using electronic means.
- (3) The Buyer acknowledges and agrees that it received and reviewed an entire copy of the vendor's statement (duly signed by the Seller in accordance with the Sale of Land Act 1962) and this Contract prior to applying its electronic signature and agrees to be bound by its terms and conditions.
- (4) The parties acknowledge and agree that the execution of this Contract has been effected as follows:
 - (i) first, the Buyer has signed the vendor's statement and then this Contract by way of an electronic signature;
 - (ii) second, the Seller has signed this Contract by way of an electronic signature; and
 - (iii) lastly, the Contract is exchanged by email or other electronic means and a copy of the Contract (as electronically signed by the Seller and Buyer) has been provided to the parties along with notification of the day of sale.

- (5) If, at any time, as a result of this Contract being entered into using electronic means either:
- (i) the Contract or any of its terms and conditions are invalid or unenforceable or the Buyer is not bound by them; or
 - (ii) the Seller reasonably believes it will be unable to obtain finance for the Development;

the Buyer must do all things necessary to execute two printed copies of the Contract and vendor's statement (in the same form and with the same day of sale as this Contract) and provide them to the Seller's solicitors.

- (6) If the Buyer fails to comply with special condition 38(5), the Buyer appoints the Seller's solicitors as its attorney to execute two printed copies of the Contract on the Buyer's behalf.
- (7) The Buyer must not make any requisitions or objection or make a Buyer Claim in relation to any matter referred to in this special condition 38.

39 Introduction Fee

- (a) The Buyer acknowledges and agrees that the Seller may:
- (i) enter into service or referral agreements or arrangements with third parties (including without limitation with any building practitioners) that relate to the Property; and/or
 - (ii) pay a fee or incentive to, or receive a fee or incentive from, third parties (including building practitioners), under any such service or referral agreements or any other arrangements.

The Buyer is not entitled to make any Buyer Claim because of any matter referred to in this special condition 39.

Annexure B – Disclosure Material
