

HYDEBERRY
ROCHEDALE

**CONTRACT OF SALE
STAGE 1**

Contract for Houses and Residential Land

Fourteenth Edition

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

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

REFERENCE SCHEDULE

Contract Date: _____ # _____

SELLER'S AGENT

NAME: **Mirvac Real Estate Pty Ltd**

ABN: 65 003 342 452 LICENCE NO: 1800787

ADDRESS: Level 9, 340 Adelaide Street

SUBURB: Brisbane STATE: Qld POSTCODE: 4000

PHONE: (07) 3859 5888 MOBILE: MOBILE: FAX: (07) 3859 5975 EMAIL: EMAIL:

SELLER

NAME: **Mirvac Queensland Pty Limited ACN 060 411 207** ABN: 24 060 411 207

ADDRESS: Level 9, 340 Adelaide Street

SUBURB: Brisbane STATE: Qld POSTCODE: 4000

PHONE: (07) 3859 5888 MOBILE: MOBILE: FAX: (07) 3859 5975 EMAIL: EMAIL:

NAME: _____ ABN: _____

ADDRESS: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

PHONE: _____ MOBILE: _____ FAX: _____ EMAIL: _____

SELLER'S SOLICITOR

■ or any other solicitor notified to the Buyer

NAME: **HWL Ebsworth Lawyers**

REF: _____ CONTACT: Samantha Ackers

ADDRESS: Level 19, 480 Queen Street
(GPO Box 2033, Brisbane Qld 4001)

SUBURB: BRISBANE STATE: QLD POSTCODE: 4000

PHONE: (07) 3169 4700 MOBILE: MOBILE: FAX: 1300 368 717 EMAIL: sackers@hwle.com.au

INITIALS

BUYER

NAME:	#	ABN:	#
ADDRESS:	#	ACN:	#
SUBURB:	_____	STATE:	_____
		POSTCODE:	_____
PHONE:	#	MOBILE:	#
		FAX:	#
		EMAIL:	#

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

BUYER'S AGENT (If applicable)

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

BUYER'S SOLICITOR

■ or any other solicitor notified to the Seller

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

PROPERTY

Land:	ADDRESS:	Proposed Lot #, # "Hydeberry", Stage #,		
	SUBURB:	Rochedale	STATE:	QLD
			POSTCODE:	4123
		<input type="checkbox"/> Built On	<input checked="" type="checkbox"/> Vacant	
Description:	Lot: Proposed Lot # being part of the Parcel and as identified on the Survey Plan and the Disclosure Plan			
	On: SP303580			
Title Reference:	To issue from the Parcel			
				#
				##
				###
				###
Area:	# m ²	■ more or less	Land sold as:	<input checked="" type="checkbox"/> Freehold <input type="checkbox"/> Leasehold
				■ if neither is selected, the land is treated as being Freehold
Present Use:	Vacant residential land			
Local Government:	Brisbane City Council			
Excluded Fixtures:	Nil			
Included Chattels:	Nil			

INITIALS

PRICE

Deposit Holder: HWL Ebsworth Lawyers

Deposit Holder's Trust Account: HWL Ebsworth Lawyers Law Practice Trust Account

Bank: Westpac Banking Corporation

BSB: 034003 **Account No:** 246634

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

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

Balance Deposit (if any) payable on: or before

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

#####

FINANCE

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

Financier: #

Finance Date: #

BUILDING AND/OR PEST INSPECTION DATE

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

MATTERS AFFECTING PROPERTY

Title Encumbrances:

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

Refer to Special Conditions, Easement Schedule, Survey Plan and Disclosure Plan

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

Tenancies:

TENANTS NAME: _____

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

TERM AND OPTIONS: _____

STARTING DATE OF TERM: ENDING DATE OF TERM: ENDING DATE OF TERM: BOND:

_____ _____ \$ _____ \$ _____

Managing Agent:

AGENCY NAME: _____

PROPERTY MANAGER: _____

ADDRESS: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

PHONE: _____ FAX: _____ MOBILE: _____ EMAIL: _____

POOL SAFETY

Q1. Is there a pool on the Land or on an adjacent land used in association with the Land?

- Yes
- No Clause 4.2 of this contract does not apply

Q2. If the answer to Q1 is Yes, is there a Compliance or Exemption Certificate for the pool at the time of contract?

- Yes Clause 5.3(1)(f) applies
- No Clause 4.2 applies (except for auction and some other excluded sales)

Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

- Yes
- No

- **WARNING TO SELLER:** Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.
- **WARNING TO BUYER:** If there is no Compliance or Exemption Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a Pool Safety Certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.
- If there is a pool on the Land and Q2 is not completed then clause 4.2 applies.
- Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

POOL SAFETY INSPECTOR

Pool Safety Inspector:

Not Applicable

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

Pool Safety Inspection Date:

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

ELECTRICAL SAFETY SWITCH AND SMOKE ALARM

This section must be completed unless the Land is vacant.

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

- Installed in the residence
- Not installed in the residence

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

- Installed in the residence
- Not installed in the residence

- **WARNING:** By giving false or misleading information in this section, the Seller may incur a penalty. The Seller should seek expert and qualified advice about completing this section and not rely on the Seller's Agent to complete this section.
- **WARNING:** Failure to install a Compliant Smoke Alarm is an offence under the Fire and Emergency Services Act 1990.

NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

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

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

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

INITIALS

SPECIAL CONDITIONS

The Seller and Buyer acknowledge and agree that the following Annexures form part of this contract:

1. Annexure "A" – Special Conditions;
2. Annexure "B" – Pre-Contract Representations - Important Notice;
3. Annexure "C" – Housing Covenants;
4. Annexure "D" - Deed Poll;
5. Annexure "E" – Survey Plan;
6. Annexure "F" – Guarantee;
7. Annexure "G" – Easement Schedule;
8. Annexure "H" - Services and Other Features Plans; and
9. Annexure "I" – Additional Special Conditions.

Foreign Person	Yes / No	Nationality	[Complete as either Yes or No. If not completed, Buyers are assumed not a Foreign Person.]
Buyer 1	#	#	
Buyer 2	#	#	
Buyer 3	#	#	
Property being acquired for owner occupier purposes (Personal Use) or investment purposes (Non Personal Use)	#		[Complete as either Occupier or Investment. If not completed, assumed Property being acquired for investment purposes.]

SETTLEMENT

SETTLEMENT DATE:	see Special Conditions	<ul style="list-style-type: none"> ■ or the next Business Day if that is not a Business Day in the Place for Settlement.
PLACE FOR SETTLEMENT:	Brisbane, see Special Conditions	<ul style="list-style-type: none"> ■ If Brisbane is inserted, this is a reference to Brisbane CBD.

SIGNATURES

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling-off period.

It is recommended the Buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

#

BUYER: ## _____ WITNESS: _____
#

BUYER: ## _____ WITNESS: _____
#

BUYER: ## _____ WITNESS: _____

SELLER: # _____ WITNESS: _____
Mirvac Queensland Pty Limited ACN 060 411 207 by its duly authorised attorneys

SELLER: # _____ WITNESS: _____

DEPOSIT HOLDER: _____

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

TERMS OF CONTRACT

FOR HOUSES AND RESIDENTIAL LAND

1. DEFINITIONS

1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
 - (2) unless the context otherwise indicates:
 - (a) **“Approved Safety Switch”** means a residual current device as defined in the *Electrical Safety Regulation 2013*;
 - (b) **“ATO Clearance Certificate”** means a certificate issued under s14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
 - (c) **“Balance Purchase Price”** means the Purchase Price, less the Deposit, adjusted under clause 2.6;
 - (d) **“Bank”** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
 - (e) **“Bond”** means a bond under the Residential Tenancies and Rooming Accommodation Act 2008;
 - (f) **“Building Inspector”** means a person licensed to carry out completed residential building inspections under the *Queensland Building and Construction Commission Regulations 2003*;
 - (g) **“Business Day”** means a day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday in the Place for Settlement; and
 - (iii) a day in the period 27 to 31 December (inclusive);
 - (h) **“CGT Withholding Amount”** means the amount determined under s14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under s14-235;
 - (i) **“Compliance or Exemption Certificate”** means:
 - (i) a Pool Safety Certificate; or
 - (ii) a building certificate that may be used instead of a Pool Safety Certificate under section 246AN(2) of the *Building Act 1975*; or
 - (iii) an exemption from compliance on the grounds of impracticality under section 245B of the *Building Act 1975*;
 - (j) **“Compliant Smoke Alarm”** means a smoke alarm complying with the requirements for smoke alarms in domestic dwellings under the *Fire and Emergency Services Act 1990*;
 - (k) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
 - (l) **“Court”** includes any tribunal established under statute.
 - (m) **“Encumbrances”** includes:
 - (i) unregistered encumbrances;
 - (ii) statutory encumbrances; and
 - (iii) Security Interests.
 - (n) **“Essential Term”** includes, in the case of breach by:
 - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
 - (ii) the Seller: clauses 5.1, 5.3(1)(a)-(d), 5.3(1)(e)(ii) & (iii), 5.3(1)(f), 5.5 and 6.1;
- but nothing in this definition precludes a Court from finding other terms to be essential.
- (o) **“Financial Institution”** means a Bank, building society or credit union;
 - (p) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2013*;
 - (q) **“GST”** means the goods and services tax under the GST Act;
 - (r) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
 - (s) **“Improvements”** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water

- systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
- (t) **“Keys”** means keys, codes or devices in the Seller’s possession or control for all locks or security systems on the Property or necessary to access the Property;
- (u) **“Notice of no pool safety certificate”** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land;
- (v) **“Notice of nonconformity”** means a Form 26 under the *Building Regulation 2006* advising how the pool does not comply with the relevant pool safety standard;
- (w) **“Outgoings”** means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies) but excludes land tax;
- (x) **“Pest Inspector”** means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulations 2003*.
- (y) **“Pool Safety Certificate”** has the meaning in section 231C(a) of the *Building Act 1975*;
- (z) **“Pool Safety Inspection Date”** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
 - (i) the Inspection Date for the Building and/or Pest Inspection; or
 - (ii) 2 Business Days before the Settlement Date
- (aa) **“Pool Safety Requirements”** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
- (bb) **“Pool Safety Inspector”** means a person authorised to give a Pool Safety Certificate;
- (cc) **“PPSR”** means the Personal Property Securities Register established under *Personal Property Securities Act 2009* (Cth);
- (dd) **“Property”** means:
 - (i) the Land;
 - (ii) the Improvements; and
 - (iii) the Included Chattels;
- (ee) **“Rent”** means any periodic amount payable under the Tenancies;
- (ff) **“Reserved Items”** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
- (gg) **“Security Interests”** means all security interests registered on the PPSR over Included Chattels and Improvements;
- (hh) **“Transfer Documents”** means:
 - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and
 - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (ii) **“Transport Infrastructure”** has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (jj) **“Withholding Law”** means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

2. PURCHASE PRICE

2.1 GST

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

INITIALS

2.2 Deposit

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

2.3 Investment of Deposit

If:

- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
 - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
 - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

2.4 Entitlement to Deposit and Interest

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

2.5 Payment of Balance Purchase Price

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

then:

- (c) for clause 2.5(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Deputy Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the Australian Taxation Office for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and

- (f) the Buyer must pay the CGT Withholding Amount to the Commissioner in accordance with s14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

- (4) For clause 2.5(3) and s14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
 - (a) the Property includes items in addition to the Land and Improvements; and
 - (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.6(3), 2.6(5) and 2.6(14), Outgoings for periods including the Settlement Date must be adjusted:
 - (a) for those paid, on the amount paid;
 - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
 - (c) for those not assessed:
 - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
 - (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
 - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
 - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) The Seller is liable for land tax assessed on the Land for the financial year current at the Settlement Date. If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Office of State Revenue.
- (5) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (6) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (7) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (8) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
- (9) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (10) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(7), 2.6(8) and 2.6(9).

- (11) Payments under clause 2.6(10) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (12) The cost of Bank cheques payable at settlement:
 - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
 - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.
- (13) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (14) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of –
 - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
 - (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.6.

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

3. FINANCE

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

4. BUILDING AND PEST INSPECTION REPORTS AND POOL SAFETY

- 4.1 Building and Pest Inspection
 - (1) This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
 - (2) The Buyer must give notice to the Seller that:
 - (a) a satisfactory Inspector's report under clause 4.1(1) has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
 - (b) clause 4.1(1) has been either satisfied or waived by the Buyer.
 - (3) If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
 - (4) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.1(2) by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
 - (5) The Seller's right under clause 4.1(4) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.1(2).
- 4.2 Pool Safety
 - (1) This clause 4.2 applies if:
 - (a) the answer to Q2 of the Reference Schedule is No or Q2 is not completed; and
 - (b) this contract is not a contract of a type referred to in section 160(1)(b) of the *Property Occupations Act 2014*.

- (2) This contract is conditional upon:
 - (a) the issue of a Pool Safety Certificate; or
 - (b) a Pool Safety Inspector issuing a Notice of nonconformity stating the works required before a Pool Safety Certificate can be issued;
 by the Pool Safety Inspection Date.
- (3) The Buyer is responsible for arranging an inspection by a Pool Safety Inspector at the Buyer's cost. The Seller authorises:
 - (a) the Buyer to arrange the inspection; and
 - (b) the Pool Safety Inspector to advise the Buyer of the results of the inspection and to give the Buyer a copy of any notice issued.
- (4) If a Pool Safety Certificate has not issued by the Pool Safety Inspection Date, the Buyer may give notice to the Seller that the Buyer:
 - (a) terminates this contract; or
 - (b) waives the benefit of this clause 4.2;
 The Buyer must act reasonably.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2(4) by 5pm on the Pool Safety Inspection Date.
- (6) The Seller's right under clause 4.2(5) is subject to the Buyer's continuing right to give written notice to the Seller of termination or waiver pursuant to clause 4.2(4).
- (7) The right of a party to terminate under this clause 4.2, ceases upon receipt by that party of a copy of a current Pool Safety Certificate.
- (8) If the Buyer terminates this contract under clause 4.2(4)(a), and the Seller has not obtained a copy of the Notice of nonconformity issued by the Pool Safety Inspector, the Seller may request a copy and the Buyer must provide this to the Seller without delay.

5. SETTLEMENT

5.1 Time and Date

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

5.2 Transfer Documents

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

5.3 Documents and Keys at Settlement

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

INITIALS

- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

5.4 Assignment of Covenants and Warranties

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

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

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

5.5 Possession of Property and Title to Included Chattels

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

5.6 Reservations

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

5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

6. TIME

6.1 Time of the Essence

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

6.2 Suspension of Time

- (1) This clause 6.2 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster but does not apply where the inability is attributable to:
 - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
 - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Natural Disaster on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Natural Disaster, the Affected Party must give the other party a notice of that fact, promptly.

- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.

- (6) A Notice to Settle must be in writing and state:

- (a) that the Suspension Period has ended; and
- (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
- (c) that time is of the essence.

- (7) When Notice to Settle is given, time is again of the essence of the contract.

- (8) In this clause 6.2:

- (a) "Affected Party" means a party referred to in clause 6.2(1);
- (b) "Natural Disaster" means a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
- (c) "Settlement Obligations" means, in the case of the Buyer, its obligations under clauses 2.5(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (e) and 5.5;
- (d) "Suspension Period" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Natural Disaster.

7. MATTERS AFFECTING THE PROPERTY

7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

7.3 Requisitions

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

7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract at settlement:
 - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
 - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
 - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
 - (d) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) The Seller warrants that, except as disclosed in this contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
 - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
 - (ii) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.
- (b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:
 - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or

- (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.

- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
- (a) an error in the boundaries or area of the Land;
 - (b) an encroachment by structures onto or from the Land; or
 - (c) a mistake or omission in describing the Property or the Seller's title to it;
- which is:
- (d) immaterial; or
 - (e) material, but the Buyer elects to complete this contract;
- the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

7.6 Requirements of Authorities

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

7.7 Property Adversely Affected

- (1) If at the Contract Date:
- (a) the Present Use is not lawful under the relevant town planning scheme;
 - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
 - (c) access or any service to the Land passes unlawfully through other land;
 - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
 - (e) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
 - (f) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
 - (g) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*,

and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

8.1 Risk

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

8.2 Access

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

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

8.3 Seller's Obligations After Contract Date

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

8.4 Information Regarding the Property

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

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR; and
- (4) further copies or details if those previously given cease to be complete and accurate.

8.5 Possession Before Settlement

If possession is given before settlement:

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

9. PARTIES' DEFAULT

9.1 Seller and Buyer May Affirm or Terminate

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

or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

9.2 If Seller Affirms

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

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

9.3 If Buyer Affirms

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

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

9.4 If Seller Terminates

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

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

9.5 If Buyer Terminates

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

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

9.6 Seller's Resale

(1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale;

provided the resale settles within 2 years of termination of this contract.

(2) Any profit on a resale belongs to the Seller.

9.7 Seller's Damages

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

9.8 Buyer's Damages

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

9.9 Interest on Late Payments

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

10. GENERAL

10.1 Seller's Agent

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

10.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification,

under the Foreign Acquisitions and Takeovers Act 1975.

10.3 Duty

The Buyer must pay all duty on this contract.

10.4 Notices

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

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

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

10.5 Business Days

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

10.6 Rights After Settlement

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

10.7 Further Acts

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

10.8 Severance

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

10.9 Interpretation

(1) Plurals and Genders

Reference to:

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

(2) Parties

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

(3) Statutes and Regulations

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

(4) Inconsistencies

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

(5) Headings

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

11. Electronic Settlement

11.1 Application of Clause

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

11.2 Completion of Electronic Workspace

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

11.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.5(1) and 2.5(3)(f).
- (3) The Seller and Buyer will be taken to have complied with clause 2.5(3) (if applicable) if:
 - (a) the Buyer complies with clause 2.5(3)(d);
 - (b) the Financial Settlement Schedule specifies payment of the CGT Withholding Amount to the account nominated by the Deputy Commissioner for Taxation.
- (4) The Seller will be taken to have complied with clauses 5.3(1)(b) and (c) if, at settlement, the Electronic Workspace contains Transfer Documents and (if applicable) releases of the Encumbrances (other than releases of Encumbrances referred to in clause 11.3(5)) for Electronic Lodgement in the Land Registry.
- (5) The Seller will be taken to have complied with clause 5.3(1)(c), (d), (e) and (f) if the Seller's Solicitor:
 - (a) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(d)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and

- (b) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
 - (c) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (6) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
 - (7) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

11.4 Computer System Unavailable

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

11.5 Withdrawal from Electronic Settlement

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

11.6 Costs

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

11.7 Definitions for clause 11

In clause 11:

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

ECNL means the Electronic Conveyancing National Law (Queensland).

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

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

Electronic Settlement means settlement facilitated by PEXA.

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

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

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

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

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

Annexure A Special Conditions

A TERMS OF CONTRACT

1. Modification to Terms of Contract

1.1 The Terms of Contract are deleted, amended or added to in accordance with the table below:

Clause No	Deletion, Amendment or Addition
1.1(2)(g)	Delete sub-clause (iii).
1.1(2)(n)	After the words " <i>Essential Term includes</i> " insert the following words: " <i>any term specified in the Special Conditions to be an Essential Term and also includes.</i> "
1.1(2)(w)	Delete the words " <i>but excludes</i> " and replace them with the words " <i>and includes</i> ".
1.1(2)(gg)	Delete sub-clause.
1.1(2)(hh)	Delete sub-clause.
2.1(3)	Insert a new clause 2.1(3) as follows: "2.1(3) (a) <i>notwithstanding clause 2.1(1) of the Terms of Contract, if and to the extent that any part of the Supply of the Property is a Taxable Supply, the Parties agree that, if it is legally entitled to do so, the Seller will apply the Margin Scheme to work out the amount of GST payable on that supply. The Seller will not issue a Tax Invoice to the Buyer for any Taxable Supply where GST is calculated under the Margin Scheme;</i> (b) <i>this clause does not merge on Settlement or termination of this contract;</i> (c) <i>words starting with a capital letter which are not defined in this clause but which have a defined meaning in the GST Act have the same meaning in this contract; and</i> (d) <i>this clause binds any other entity who is or becomes the supplier or recipient of the supply of the Property or any other supply under or by reason of this contract.</i> "
2.3	Delete clause.
2.6	Delete sub-clauses (2)(c), (3), (5), (6) and (14).
2.6(2)	Delete the words " <i>Subject to clauses 2.6(3), 2.6(5) and 2.6(14),</i> "
2.6(4)	Delete clause and replace with the following: "2.6(4) <i>Land tax will be calculated for apportionment purposes on the basis that, as at midnight on the previous 30th June, the Seller owned no land other than its interest in the Parcel (or that part of the Parcel or land derived from the Parcel) (Base Parcel) registered as at the 30 June prior to the Settlement Date, or if there was at that date a separate valuation for the Land, that the Seller owned</i>

	<p><i>no land other than its interest in the Land. If there is no separate valuation for the Land, then the land tax amount for apportionment purposes for the Land will be determined using the following formula:</i></p> $\frac{\text{Amount} \times \text{AL}}{\text{AP}}$ <p><i>Where:</i></p> <p><i>Amount = amount of land tax payable on the Base Parcel for the land tax year in which Settlement is to be effected (whether paid or unpaid).</i></p> <p><i>AL = Area of the Land in square metres.</i></p> <p><i>AP = Area of the Base Parcel in square metres.</i></p> <p><i>If the valuation for the Base Parcel includes land other than the lot(s) which were subdivided to create the Land (and other land on the Survey Plan), the "Amount" will be determined on a proportionate area basis or other more appropriate basis as determined by the Seller's Solicitor acting reasonably."</i></p>
2.6(12)	<p>Delete clause and replace with the following:</p> <p><i>"The cost of all Bank cheques payable at Settlement are the responsibility of the Buyer".</i></p>
3.5	<p>Insert a new clause 3.5 as follows:</p> <p><i>"If the Buyer terminates this contract under clause 3.2(1) of the Terms of Contract, then the Buyer must provide the Seller with a copy of the finance decline correspondence from its Bank when the Buyer terminates this contract. This is an Essential Term of this contract."</i></p>
5.1	Delete clause.
5.2	Delete clause.
5.3(1)(b)	<p>After the words "after stamping" insert the following words:</p> <p><i>"and registration of any release or withdrawal of any Encumbrances which are required by this contract to be provided by the Seller to the Buyer at Settlement"</i>.</p>
5.3	Delete sub-clauses (1)(d), (1)(e), (1)(f) and (3).
5.4	Delete clause.
5.6	Delete clause.
7.4(3)(b)	<p>After the words "a warranty in clause 7.4(3)" insert the following words:</p> <p><i>"and the Buyer is materially adversely affected by the warranty not being correct"</i>.</p>
7.4 (4)	<p>After the words "clause 7.4 (1) or clause 7.4 (2)" insert the following words:</p> <p><i>"and the Buyer is materially adversely affected by the warranty not being correct" .</i></p>
7.5(1)	Delete sub-clause.

7.6(1)	After the words " <i>Subject to</i> " insert the following words: " <i>Special Condition 16 and</i> ".
7.7(1)	Delete the words " <i>Contract Date</i> " and replace them with the words " <i>Settlement Date</i> ".
7.8	Insert the words " <i>or to the cost of relocating any fence</i> " at the end of the first sentence and at the end of the clause insert the following words: " <i>The Parties acknowledge that this clause is an agreement made between adjoining owners about a dividing fence for the purposes of section 10 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld) and does not merge on Settlement.</i> ".
8.1	Delete clause and replace with the following: " <i>The Property is at the Seller's risk until:</i> (a) <i>if Special Condition 5.1 applies, the Seller gives notice to the Buyer that (in accordance with Special Condition 5.1) the Condition Subsequent has been satisfied; or</i> (b) <i>if Special Condition 5.1 does not apply, 5:00pm on the first Business Day after the Contract Date,</i> <i>and then the Property is at the Buyer's risk.</i> ".
8.3	Delete the second sentence of sub-clause (1). Delete sub-clauses (2) and (3).
8.4	Delete clause.
9.6	Delete the words " <i>provided the resale settles within 2 years of termination of this contract</i> ".
10.2	Delete clause and replace with the following: " 10.2 Foreign Buyer Approval 1. <i>The Buyer warrants and represents to the Seller that its status as a Foreign Person as shown in the Reference Schedule is correct. The Buyer acknowledges that the Seller has relied on and been induced by the Buyer's warranty and representation in electing to enter into this contract. If the Buyer's warranty and representation is not correct, the Buyer will be taken to have breached an Essential Term and the Seller may take whatever actions are available to the Seller under this contract or at law.</i> 2. <i>If the Buyer does not declare in the Reference Schedule that the Buyer is a Foreign Person then the Buyer warrants that either:</i> 2.1 <i>the Buyer's purchase of the Property is not a notifiable action; or</i> 2.2 <i>the Buyer has received a no objection notification,</i> <i>under the Foreign Acquisitions and Takeovers Act 1975 (FATA).</i> 3. <i>If the Buyer declares in the Reference Schedule that the Buyer is a Foreign Person then:</i>

	<p>3.1 <i>this contract is subject to the Treasurer of the government of the Commonwealth of Australia (Treasurer) or his delegate consenting to or providing a notice that the Treasurer has no objections (or similar) to the Buyer's purchase of the Property under FATA (FIRB Approval) within 30 days after the Contract Date (Approval Date);</i></p> <p>3.2 <i>the Buyer must make an application for FIRB Approval within 7 days after the Contract Date (Application Date) and use its best endeavours and must take all available steps and must diligently pursue that application. The Buyer must promptly pay all fees and taxes associated with the application and FIRB Approval. This clause is an Essential Term;</i></p> <p>3.3 <i>the Buyer must keep the Seller informed of the progress of the application for FIRB Approval and provide to the Seller a copy of the application and other material submitted with the application for FIRB Approval and correspondence between the Buyer and the Treasurer or his delegate concerning the application. The Buyer will immediately upon receipt or dispatch deliver to the Seller copies of correspondence between the Buyer or its solicitors or consultants and the Treasurer or his delegate and advise in writing of the context of any telephone discussions with the Treasurer or his delegate;</i></p> <p>3.4 <i>the Buyer must give notice to the Seller of the outcome of the application for FIRB Approval within 5 Business Days of determination by the Treasurer and in any event by the Approval Date, indicating that the:</i></p> <p style="padding-left: 40px;">(a) <i>FIRB Approval has been obtained; or</i></p> <p style="padding-left: 40px;">(b) <i>FIRB Approval has not been obtained and that this contract is terminated (in which case the Deposit and any Interest is to be released to the Buyer and neither Party has any Claim against the other);</i></p> <p>3.5 <i>if the Buyer fails to give notice to the Seller by 5.00pm on the Approval Date, then the Seller may terminate this contract by notice in writing to the Buyer. Upon receipt of such notice, this contract will be at an end and neither party will have any further rights against the other except with respect to any antecedent breach of this contract. The Seller's right to terminate is subject to the Buyer's continuing right to give notice to the Seller under sub-clause 3.4 before the Seller exercises its right to terminate under this clause;</i></p> <p>3.6 <i>the Buyer acknowledges that where vacant land is being purchased FIRB Approval will likely be subject to conditions including but not limited to a condition that the Buyer undertakes to construct a dwelling upon the Land within a certain period of time. The Buyer agrees that if such a condition (or similar conditions) are imposed on the Buyer as a term of receiving FIRB Approval, then such conditions are satisfactory to the Buyer for the purpose of this clause and will not entitle the Buyer to terminate this contract if FIRB Approval is otherwise obtained by the Buyer; and</i></p> <p>3.7 <i>this clause cannot be waived by the Buyer or Seller and must be satisfied by the Buyer."</i></p>
10.4	<p>Delete clause and replace with the following:</p> <p>"10.4 Notices</p> <p>1. <i>Notices under this contract must be in writing and must be signed by or on behalf</i></p>

	<p>of a Party.</p> <p>2. Unless stipulated otherwise under this contract, notices given by a Party's solicitor will be treated as given with that Party's authority.</p> <p>3. Notices are considered to be signed if affixed with a manuscript mark, signature or initials or a typed name of a person, firm or company whether conveyed electronically, digitally or otherwise.</p> <p>4. In the case of the Buyer, notices are effectively given if:</p> <p>4.1 delivered or posted to the address of the Seller or the Seller's Solicitor;</p> <p>4.2 sent by electronic facsimile or similar method to the facsimile number of the Seller or the Seller's Solicitor; or</p> <p>4.3 sent by email or other digital means to the relevant email or other digital address of the Seller or the Seller's Solicitor,</p> <p>which are set out in the Reference Schedule as updated from time to time.</p> <p>5. In the case of the Seller, notices are effectively given if:</p> <p>5.1 delivered or posted to the address of the Buyer or the Buyer's Solicitor;</p> <p>5.2 sent by electronic facsimile or similar method to the facsimile number of the Buyer or the Buyer's Solicitor; or</p> <p>5.3 sent by email or other digital means to the relevant email or other digital address of the Buyer or the Buyer's Solicitor,</p> <p>which are set out in the Reference Schedule as updated from time to time.</p> <p>6. Posted notices will be treated as given 3 Business Days after posting.</p> <p>7. Notices sent by facsimile including electronic facsimile or similar method will be treated as given when the sender obtains a clear transmission report or other confirmation of delivery.</p> <p>8. Notices sent by email are taken to be given 1 hour after they are sent, unless the sender receives notification that the email failed to be delivered to the recipient. If asked by the sender of an email to confirm receipt, the recipient must confirm receipt within a reasonable period of request.</p> <p>9. For the purposes of Section 11 and 12 of the Electronic Transactions Act 2001 (Qld) and the Electronic Transactions Act 1999 (Cth), the Parties consent to notices and any other information being given by electronic communication.</p> <p>10. If the Buyer is no longer represented by a solicitor and has no current known contact particulars for the giving of a notice, the Seller may give notice to the Buyer's last known contact particulars even if it is known to the Seller that the Buyer may not receive the notice. The Parties' intention is that the onus is on the Buyer to ensure that the Seller at all times has current particulars of the Buyer in order to enable the Seller to give notice."</p>
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10.9	<p>Insert new sub-clauses (6), (7), (8) and (9) as follows:</p> <p>(6) Use of the word "including"</p> <p style="padding-left: 20px;">"Including" and any similar expressions are not words of limitation.</p> <p>(7) Use of the word "or"</p> <p style="padding-left: 20px;">In any combination or list of options, the use of the word "or" is not used as a word of limitation.</p> <p>(8) Things to be done and notices given by Buyer</p> <p style="padding-left: 20px;">If this contract provides for something to be done by a certain date, the Buyer must do so by 5.00 pm, Brisbane time, on that date. Notices are required to be given by the Buyer at any time until 5.00 pm on the due date. Such notices given after 5.00 pm will be treated as given on the next Business Day.</p> <p>(9) Notices given by Seller</p> <p style="padding-left: 20px;">Notices may be given by the Seller at any time until 11.59 pm on the date that they are given. Such notices given after 11.59 pm will be treated as given on the next Business Day.</p>
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- DRAFT
- 2. **Application of Terms of Contract** (ii) is in a form acceptable to the Seller;
 - 2.1 The Terms of Contract apply to this contract unless excluded expressly or by implication. (iii) is for the amount of the Deposit;
 - 2.2 The Parties acknowledge receipt of a copy of the Terms of Contract before signing this contract. (iv) is issued in favour of HWL Ebsworth Lawyers (as "Favouree" as opposed to specifying the Seller as Favouree);
 - 3. **Additional Definitions**
 - 3.1 In addition to the definitions contained in clause 1 of the Terms of Contract, the following definitions apply to this contract:
 - (a) **Authority** means any body, government, person or otherwise having or exercising control over the approval of, carrying out of, use or operation of the Property or the Estate or any Services to be provided to the Land or the Estate, including, but not limited to, the Local Government and the department of Economic Development Queensland. (v) specifies that the Seller has agreed to accept the bank guarantee instead of payment of a cash deposit;
 - (b) **Bank Guarantee** means a bank guarantee that:
 - (i) is issued by an Australian Bank acceptable to the Seller; (vi) requires the bank to pay HWL Ebsworth Lawyers the Deposit amount without first checking with the Buyer or any other third party;
 - (ii) is issued by an Australian Bank acceptable to the Seller; (vii) has no expiry date and be unconditional and irrevocable; and
 - (iii) is issued by an Australian Bank acceptable to the Seller; (viii) contains the names of the Seller and the Buyer (and no other third party) and makes reference to this contract and the sale made under it, e.g:

- Mirvac Queensland Pty Limited sale of Lot No. # on SP303580 in "Hydeberry" to # # #
- (c) **Builder** means a builder who has been advertised through the Seller's current marketing campaign.
- (d) **Building Contract** means a contract with a Builder to build a Dwelling on the Land.
- (e) **Claim** includes any claim, cause of action, proceeding, right, entitlement, damages, costs, losses, liability or demand however it arises and whether it is past, present or future, fixed or unascertained, actual, potential or contingent.
- (f) **Condition Subsequent** means the condition set out in Special Condition 5.1.
- (g) **Dealing** has the meaning given in Special Condition 53.1(a).
- (h) **Deed Poll** means the deed poll which is attached to this contract in Annexure D.
- (i) **Deposit Bond** means a bond or other surety (howsoever categorised) that is:
- (i) from an insurance company or other institution acceptable to the Seller (at the Contract Date being only QBE as the insurer or underwriter);
 - (ii) in a form acceptable to the Seller;
 - (iii) for an amount equal to the Deposit; and
 - (iv) payable on demand.
- (j) **Development Approval** means the development approval for the Estate or that stage or part of the Estate in which the Land is or is to be situated, a copy of which may be obtained from the Seller upon request.
- (k) **Disclosure Plan** has the meaning given to it in the LSA.
- (l) **Disclosure Statement** has the meaning given to it in the LSA.
- (m) **Display Home** has the meaning given to that term in the *Domestic Building Contracts Act 2000 (Qld)*.
- (n) **Dwelling** means the residential detached dwelling to be constructed on the Land by the Builder under the Building Contract.
- (o) **Easement Schedule** means the Easement Schedule attached to this contract in Annexure G which sets out the easements affecting or proposed to affect the Land (and possibly other land or lots within the Estate).
- (p) **Estate** means the estate or proposed estate called Hydeberry of which the Land forms or is intended to form part.
- (q) **Finance Condition** means the condition in relation to approval of a loan contained in clause 3.1 of the Terms of Contract.
- (r) **Guarantee and Indemnity** means the Guarantee and Indemnity in Annexure F.
- (s) **Guarantor** means the guarantor/s required by the terms of this contract to guarantee the performance of the Buyer.
- (t) **Housing Covenants** means the housing covenants which are attached to this contract in Annexure C in respect of building improvements on the Land and within the Estate as varied by the Seller from time to time.
- (u) **Instalment Contract** has the meaning given to it under Section 71 of the PLA Act.
- (v) **LSA** means the *Land Sales Act 1984 (Qld)*.
- (w) **Mirvac** means each Related Body Corporate of Mirvac Limited ACN 003 280 699 from time to time.
- (x) **NBN Co** means NBN Co Limited ABN 86 136 533 741.

- (y) **NBN Co Building Ready Specifications** means the specifications governing the building requirements for connection of the Land to the Network Infrastructure as provided by NBN Co or as otherwise available on NBN Co's website, as may change from time to time including but not limited to:
- (i) NBN Co In-Home Wiring Guide for SDUs and MDUs;
 - (ii) New Developments: Deployment of the NBN Co Conduit and Pit Network – Guidelines for Developers; and
 - (iii) NBN Co Residential Preparation and Installation Guide: SDUs and MDUs.
- (z) **NBN Co Carrier Licence** means the carrier licence granted to NBN Co by the Australian Communications and Media Authority on 18 March 2010 under section 56 of the *Telecommunications Act 1997 (Cth)*.
- (aa) **Network Infrastructure** means the physical infrastructure of the high speed broadband fibre optic network which may be installed by NBN Co for the stage of the Estate in which the Land is located including all fibre, cables, electronic devices and equipment, ducts, poles, towers, cabinets, housing and any other active and passive equipment and distribution infrastructure, but not including the Pit and Pipe Works, any existing pit and pipe infrastructure, lead-in conduit, the network termination unit or the power supply unit and related cable at the Land.
- (bb) **Novation Deed** means a deed (in a form reasonably required by the Seller) to be made in relation to a Dealing and under which, on and from completion of the Dealing, the Third Party covenants in favour of the Buyer to be bound by the obligations of the Seller under this contract.
- (cc) **Object or Objections** means to object generally and includes:
- (i) object to a Variation;
 - (ii) object to a Permitted Variation;
 - (iii) object to Title;
 - (iv) avoid or attempt to avoid this contract;
 - (v) refuse to effect Settlement;
 - (vi) delay Settlement;
 - (vii) claim compensation or any reduction in the Purchase Price;
 - (viii) retain any part of the Purchase Price;
 - (ix) require the Seller to carry out any works to the Property;
 - (x) make any Claim, demand, appeal or suit of any nature;
 - (xi) withhold a consent; or
 - (xii) seek an injunction.
- (dd) **Other Features** means street trees, street lights, bin pads, footpaths and driveways (constructed during operational works).
- (ee) **Parcel** means Lot 2 on SP297371 with title reference 51115879 and any additional adjoining or nearby land acquired by the Seller for development as part of the stage of the Estate that includes the Land and, where the context permits or requires, includes any land derived from the Parcel. The Land is part of or will be created from the Parcel.
- (ff) **Parties** means the Seller and the Buyer. In the Terms of Contract, Parties may be referred to as "parties".
- (gg) **Party** means the Seller and/or the Buyer as the context requires. In the Terms of Contract, Party may be referred to as "party".
- (hh) **Permitted Variation** means a Variation which, viewed objectively,

does not have a material adverse effect on the use or value of the Land and which does not result in the Land being substantially different to that described in this contract or as shown in the Disclosure Plan and, without limitation, includes a variation of:

- (i) up to 2% in details of area;
 - (ii) up to 1% in details of linear dimensions for bearings and distances;
 - (iii) up to 500mm in height in details of surface contours or fill levels;
 - (iv) up to 500mm in height in details of retaining walls; or
 - (v) up to 500mm in location in details of retaining walls, as compared to those details set out in the Disclosure Plan; or
 - (vi) for any other difference, a difference of 5% or less in any one or more of the relevant lot particulars between the Land "as constructed" and the relevant lot particulars for the Land set out in the Disclosure Plan.
- (ii) **Personal Information** means all personal information (as defined in the Privacy Act) relating to the Buyer, including all personal information set out in this contract and otherwise disclosed by the Buyer to the Seller whether prior to or after the Contract Date.
 - (jj) **PLA Act** means the *Property Law Act 1974 (Qld)*.
 - (kk) **Pit and Pipe Works** means the physical infrastructure, including all pits, pipes, conduits and any other materials to be designed and constructed by the Seller under the Seller's agreement with NBN Co (if any) necessary to properly service the stage of the Estate in which the Land is located and to properly service the Land and other land

within the Estate with the Network Infrastructure.

- (ll) **Prescribed Percentage** has the meaning given to prescribed percentage in the PLA Act.
- (mm) **Privacy Act** means the *Privacy Act 1988 (Cth)* and any regulations, ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instrument made or issued under that Act, as amended from time to time.
- (nn) **Privacy Officer** means so far as Mirvac is concerned, "Privacy Officer", the Mirvac Group, Level 26, 60 Margaret Street, Sydney NSW 2000, Ph: (02) 9080 8000, Email: privacy@mirvac.com.
- (oo) **Project Manager** means any project manager appointed by the Seller for the Estate from time to time. If no project manager is appointed, then the Seller's surveyor or town planner (for the Estate).
- (pp) **Promotional Materials** means all marketing materials (including website), models, artists impressions, display boards and similar in relation to the Property and the Estate.
- (qq) **Reference Schedule** means the Reference Schedule of the Terms of Contract.
- (rr) **Related Body Corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001 (Cth)*.
- (ss) **Services** means water supply, electricity (including street lighting), gas, sewerage, stormwater, roofwater, and telephony services.
- (tt) **Services and Other Features Plans** means the plans contained in Annexure H.
- (uu) **Settlement** means the event of settlement of this contract. In the Terms of Contract, Settlement may be referred to as "settlement".
- (vv) **Settlement Materials** means all releases, withdrawals, documents,

certificates, declarations, notices, instruments, materials or letters or similar which the Seller is required to provide or deliver to the Buyer at Settlement.

- (ww) **Settlement Statement** means a statement which outlines or lists:
- (i) the calculation of the Balance Purchase Price payable by the Buyer to the Seller at Settlement (including details of adjustments to the Purchase Price for the Deposit paid, Outgoings and other amounts payable by the Parties under this contract);
 - (ii) directions as to payment of the Balance Purchase Price by Bank cheques (or trust cheques if authorised by the Seller);
 - (iii) Settlement Materials; and
 - (iv) any other particulars the Seller considers appropriate.
- (xx) **Special Conditions** means these Special Conditions.
- (yy) **Sunset Date** means the date 18 months after the Contract Date.
- (zz) **Survey Plan** means the survey plan which is to be registered with the Queensland Titles Registry creating Title, a draft of which is attached to this contract in Annexure E.
- (aaa) **Terms of Contract** means the accompanying Terms of Contract for Houses and Residential Land (Fourteenth Edition) adopted by the Real Estate Institute of Queensland Limited and approved by the Queensland Law Society Incorporated.
- (bbb) **Third Party** means the person in whose favour the Seller effects a Dealing.
- (ccc) **Title** means title to the Land.

(ddd) **Transfer Documents** means:

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

(If before Settlement the Queensland Titles Registry changes their requirements or the form of the Transfer Documents, then the definition of Transfer Documents will be deemed to be amended to give effect to the intent of this contract so that to provide for the then equivalent forms and documents as determined by the Seller's Solicitors, acting reasonably).

- (eee) **Variations** means changes, variations, reductions, omissions, substitutions or additions to (as the context requires) the Estate or the Property including changes, variations, reductions, omissions, substitutions or additions to the Estate or the Property which are in respect of the:
- (i) titling arrangements;
 - (ii) utility infrastructure and supply arrangements and Services;
 - (iii) method of carrying out civil works or construction;
 - (iv) construction materials;
 - (v) number of lots within the Estate, including any stage in it;
 - (vi) number of stages within or proposed to be within the Estate;
 - (vii) omission or reduction of stages or lots within the Estate including not proceeding with the balance stages of the Estate;
 - (viii) facilities;

- (ix) access arrangements;
- (x) landscaping;
- (xi) composition;
- (xii) density;
- (xiii) mix of uses;
- (xiv) design;
- (xv) improvements;
- (xvi) levels;
- (xvii) topography;
- (xviii) permitted uses;
- (xix) roads or open spaces;
- (xx) location;
- (xxi) layout;
- (xxii) size;
- (xxiii) dimensions;
- (xxiv) area;
- (xxv) community facilities within the Estate;
- (xxvi) descriptions or identification numbers of lots and plans;
- (xxvii) number, location, extent and existence of retaining and revetment walls and the manner the retaining and revetment walls are constructed (eg. battering, etc) and the materials the retaining walls are constructed of; and
- (xxviii) addresses – street names and numbers.

B **CONDITION SUBSEQUENT**

4. **Application of Part**

- 4.1 This Part B only applies if there is no Title at the Contract Date.

5. **Condition Subsequent**

- 5.1 This contract is conditional on the Seller causing a survey plan to be registered with the Queensland Titles Registry which creates indefeasible Title on or before the Sunset Date (**Condition Subsequent**).

6. **Unreasonable Conditions**

- 6.1 The Seller must take reasonable steps to satisfy the Condition Subsequent. The Seller is not required to commence or pursue any Court proceedings to satisfy the Condition Subsequent.

- 6.2 If any Authority refuses to grant or revokes any necessary permit or approval or refuses to seal any survey plan or imposes any conditions on any permit or approval (required in order to satisfy the Condition Subsequent) with which the Seller is, acting reasonably, unwilling to comply, then the Seller may terminate this contract by notice to the Buyer. If this happens:

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

7. **Delays in Satisfying Condition Subsequent**

- 7.1 If failure to satisfy the Condition Subsequent by the Sunset Date is due to delays attributable to:

- (a) damage by flooding, water, fire, explosion, earthquake, wind, cyclone, lightning, storm, tsunami, any other act of nature or war, civil commotion or act of terror;
- (b) legal proceedings concerning the Land or the Estate;
- (c) delay of any Authority in issuing a necessary approval or permit;
- (d) inclement weather;
- (e) unavailability of materials, labour or contractors for civil works and construction;
- (f) industrial dispute or disturbance of any kind;

- (g) delay by any contractor carrying out civil works or construction;
- (h) delay in procuring sufficient presale of lots in the Estate (or the stage of the Estate in which the Land is situated) to secure funding for civil works construction; or
- (i) any other cause beyond the control of the Seller,

then the Seller may extend and further extend the Sunset Date by a period equal to or less than the period of the delay by notice to the Buyer. Certification by the Project Manager as to the causes and period of delay is final and binding on the Parties. If the Seller extends the Sunset Date for a period less than the period of the delay, the Seller may later further extend the Sunset Date for the additional period of the delay by notice to the Buyer. The Project Manager must be directed by the Seller to act impartially in giving the certification.

8. Failure to Satisfy Condition Subsequent

8.1 If the Condition Subsequent is not satisfied by 6.00pm on the Sunset Date (as extended) then, subject to Special Condition 8.2, either Party may terminate this contract by notice to the other. If this happens:

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

8.2 The Buyer may only terminate this contract (after the Sunset Date) under Special Condition 8.1 until the Seller has notified the Buyer that the Condition Subsequent has been satisfied.

9. Notification of Satisfaction of Condition Subsequent

9.1 If the Condition Subsequent is satisfied, the Seller must give the Buyer notice of satisfaction not later than 90 days after the date that the Condition Subsequent is satisfied and in any event by no later than 6.00pm on the Sunset Date.

C LAND SALES ACT PROVISIONS

10. Application of Part

10.1 This Part C only applies if there is no Title when the Buyer signs this contract.

11. Promises about Disclosure Statement and Disclosure Plan

11.1 Subject to Special Condition 39, the Buyer promises the Seller that, before the Buyer signed this contract, the Buyer:

- (a) received the completed Disclosure Statement which was dated and signed by or on behalf of the Seller;
- (b) received the Disclosure Plan; and
- (c) reviewed the content of the Disclosure Statement and the Disclosure Plan and took whatever legal advice and other advice about them that the Buyer deemed necessary.

11.2 Subject to Special Condition 39, the Buyer acknowledges and agrees that:

- (a) the Disclosure Statement states all the particulars required by the LSA and is substantially complete; and
- (b) the Disclosure Plan complies with all of the requirements for a disclosure plan under the LSA and is substantially complete.

12. Authority for Disclosure Statement and Disclosure Plan

12.1 If the Seller has not itself:

- (a) signed the Disclosure Statement; and
- (b) given the Disclosure Plan,

the Seller confirms that the person who did so was authorised by the Seller in that regard.

13. Variations to Land

13.1 The Buyer agrees that:

- (a) as the Land is sold "off the plan", there are likely to be discrepancies between the Land as described in

this contract, the Promotional Materials and the Disclosure Plan as compared to the Land when it is completed and titled; and

- (b) no party has made any promise or representation to the Buyer that the Land as completed and titled will be exactly the same as described in this contract, the Promotional Materials or the Disclosure Plan.

13.2 The Seller is entitled to make Variations to the Land. Subject to the rights of the Buyer under the LSA, the Buyer must not Object to any Variation to the Land provided the Variation is a Permitted Variation.

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

13.4 The Buyer agrees that it will not be materially prejudiced under section 13 of the *Land Sales Act 1984 (Qld)* if the Land is affected by a Permitted Variation.

13.5 If the Buyer is entitled to Object due to a Variation, the Buyer's sole right is to terminate this contract within 21 days after the Seller gives notice to the Buyer of the Variation. If this happens:

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

D ESTATE AND LAND

14. Staged Estate

14.1 The Buyer acknowledges that:

- (a) the Estate may be developed progressively by the Seller; and
- (b) this involves or will involve (amongst other things) the progressive carrying out of various works and the making of town planning and building applications of various types to Authorities (**Applications**).

14.2 The Buyer must not:

- (a) make or maintain any Objection either alone or jointly with others against or do anything which may adversely affect any of the Applications and consents to the Applications;
- (b) Object in relation to any dust, noise, nuisance or traffic interference which results from the carrying out of and works within the Estate;
- (c) do or omit anything which would prevent the Seller from completing the Estate or selling allotments in the Estate; and
- (d) Object if the Seller does not complete construction of any other land included in the Estate or does not continue to develop any of the land owned by the Seller.

14.3 The Buyer must not sell, transfer, assign or otherwise dispose of the Land without first delivering to the Seller a deed poll executed by the future buyer, transferee, assignee or dispone in favour of the Seller containing covenants in the same terms (mutatis mutandis) as this Special Condition 14 including an obligation for each further buyer, transferee, assignee or dispone to obtain a further deed poll from any subsequent buyer, transferee, assignee or dispone. The covenant to be obtained is to be in the form of the Deed Poll.

15. Variations to Estate

15.1 The Seller is entitled to make Variations to the carrying out of the Estate as determined by the Seller in its total discretion. The Buyer will not Object because of any Variations.

15.2 The Buyer acknowledges that although the Land is in the development known as Hydeberry, the name of the place, suburb, stage or village in which the Land is situated may or may not now or in the future be called Hydeberry. The Buyer will not Object because of any variation.

16. Services and Amenities

16.1 The Buyer acknowledges that:

- (a) under the approvals granted to the Seller for the development of the Estate, various Authorities or the

Seller under arrangements with those Authorities are to provide Services and amenities;

- (b) any of the Services and amenities may be constructed inside the boundaries of the Land and/or outside the boundaries of an easement; and
- (c) the Buyer must not Object if any of the Services or amenities are not provided on or before the Settlement Date or are constructed inside the boundaries of the land and/or outside the boundaries of an easement.

16.2 The Seller must use reasonable endeavours to ensure that the Services and amenities are provided on or before the Settlement Date, but if the Services and amenities are not provided on or before the Settlement Date, the Buyer has no right to Object and the Seller will cause the Services and amenities to be provided as soon as practicable after the Settlement Date.

16.3 The Seller may make changes to the location of any Services and amenities in the Land and the Buyer must not Object. The Buyer acknowledges and agrees that any site plan prepared by the Seller identifying the proposed location of Services and amenities in the Land is subject to change.

16.4 To avoid any doubt, the Seller may satisfy any of its obligations under this contract by bonding the performance of any of its obligations pursuant to any Development Approval, or any other requirement of the relevant responsible Authority.

17. National Broadband Network

17.1 The Seller may in its discretion enter into an agreement with NBN Co for the installation of Pit and Pipe Works and Network Infrastructure but is not obliged to enter into such agreement and makes no warranty that it will enter into such agreement. The Buyer must not Object if the Seller does or does not enter into such an agreement with NBN Co.

17.2 If the Seller enters into an agreement with NBN Co as referred to in Special Condition 17.1, the Seller discloses to the Buyer and the Buyer acknowledges and accepts that:

- (a) the NBN Co Building Ready Specifications must be complied with

by the Buyer to enable connection of the Land to the Network Infrastructure and the Buyer agrees to adopt the NBN Co Building Ready Specifications; and

- (b) if the Buyer fails to comply with the NBN Co Building Ready Specifications, this will prevent connection of the Land to the Network Infrastructure or will require the Buyer to incur additional costs in order to connect the Land to the Network Infrastructure following Settlement.

17.3 The Buyer agrees that it must and must ensure that its agents, consultants, builders, contractors, invitees and other third parties not related to the Seller or NBN Co do not:

- (a) construct a driveway or other structure over the Pit and Pipe Works;
- (b) cause the level of the Pit and Pipe Works to be higher than or lower than ground level; and
- (c) obstruct access to the Pit and Pipe Works.

17.4 The Buyer acknowledges and agrees that any breach of Special Condition 17.3 may prevent connection of the Land to the Network Infrastructure or may require the Buyer to incur additional costs in order to connect the Land to the Network Infrastructure following settlement.

17.5 The Buyer agrees and acknowledges that any additional costs payable as a consequence of a breach of Special Conditions 17.2 and 17.3 will be at the cost of the Buyer and the Buyer releases and indemnifies the Seller in this respect.

17.6 The Buyer acknowledges that:

- (a) the Seller is not responsible for the connection of telecommunications services to the Land beyond the installation the Pit and Pipe Works to the boundary of the Land;
- (b) the Seller has no control over the timing of the connection of telecommunications services to the Land which is solely the responsibility of NBN Co or such

- other provider as may be prescribed by a relevant authority;
- (c) if NBN Co has not connected telecommunication services to the Land when such services are required by Telstra Corporation Limited or such other provider as may be declared by a relevant authority, Telstra Corporation Limited is required to do so in accordance with the universal service obligation; and
- (d) the Seller has no control over the type of telecommunications service provided in accordance with the universal service obligation.
- 17.7 The Buyer acknowledges that:
- (a) the Pit and Pipe Works will vest in NBN Co on installation and thereafter, the Pit and Pipe Works will be the sole property of NBN Co and that NBN Co, as owner, will have the right to maintain, repair, alter, remove or replace the Pit and Pipe Works;
- (b) it must not interfere with or allow or cause others to interfere with the Network Infrastructure; and
- (c) NBN Co has rights and powers under the NBN Co Carrier Licence, Schedule 3 and at law.
- 17.8 The Buyer agrees in accordance with clauses 17(5), 18(3) and 19(2) of Schedule 3, to waive its right to be given notice in relation to any activity to be undertaken by NBN Co on the Land or any areas ancillary to the Land which is authorised under Schedule 3, and any right that the Buyer may have to object to those activities.
- 17.9 The Buyer agrees to the Seller providing NBN Co with the Buyer's contact details and for NBN Co to contact the Buyer directly and provide the Buyer with a new purchaser NBN Co information pack and materials.
- 17.10 The Buyer must not Object in relation to any matter referred to in this Special Condition, including in relation to the timing or type of telecommunication service provided to the Land.
18. **No representations to Foundation Requirements**
- 18.1 The Buyer acknowledges and agrees that the Seller has made no representation or warranty as to the type, nature or method of structural foundation or footing which may be required for future development on the Land by the Buyer or any other person and will not Object or make a Claim against the Seller due to geotechnical conditions of the Land.
- E TITLE**
19. **Title**
- 19.1 Title is under the *Land Title Act 1994* (Qld). The Buyer accepts Title subject to the requirements of that Act.
- 19.2 The Buyer accepts Title subject to and will not Object in relation to the following matters (all or which are authorised or permitted dealings for the purposes of this contract):
- (a) any matter endorsed upon the survey plan creating Title;
- (b) any rights or interests reserved in favour of the Crown;
- (c) any administrative advices or similar dealings;
- (d) any encumbrances in favour of any Authority or any service authority (whether registered, unregistered or statutory);
- (e) the conditions of any approval of any Authority;
- (f) any notifications, easements, restrictions, encumbrances, covenants or other matters or dealings disclosed to the Buyer in this contract, the Disclosure Statement, the Disclosure Plan or elsewhere;
- (g) all notifications, easements, restrictions, encumbrances, covenants and dealings (other than a mortgage, caveat, writ or charge) on the title for the Parcel or the Title or otherwise affecting the Title not disclosed to the Buyer provided they do not materially adversely affect the Buyer's use or value of the Land;

- (h) any easements benefiting or burdening the Land or the Parcel, whether statutory or otherwise for:
- (i) the passage or provision of Services; or
 - (ii) access; and
- (i) all notifications, easements, statutory covenants and restrictions in relation to the Title, the Parcel or the Land reasonably required in order to satisfy the requirements of any Authority.
- 19.3 Providing that there is no direct material adverse effect on the use or value of the Land, and without limitation to the Seller's rights elsewhere in this contract, the Buyer will not Object as a result of:
- (a) the Estate being developed progressively (including civil and construction works) in any sequence determined by the Seller and any nuisance or interference to occupiers which results from the ongoing development of the Estate;
 - (b) any transfer, lease, easement, licence, covenant or other right over part of the Estate, given to any Authority, the owner or occupier of land in the Estate, the owner or occupier of nearby land or any other person;
 - (c) any name shown on this contract not being the name of the Estate, place or suburb in which the Land is located;
 - (d) a boundary of the Land or the Estate not being fenced;
 - (e) any fence or retaining wall not being upon or within the boundary of the Land or the Estate;
 - (f) any fence or retaining wall being located:
 - (i) wholly within the Land;
 - (ii) wholly within the boundary of a lot adjoining the Land; or
 - (g) the existence of any minor encroachment onto or from the Land;
 - (h) the existence or passage through the Land of utilities or utility infrastructure or other systems or Services whether for the Land or other adjoining or neighbouring property or lots and whether or not protected by registered easement;
 - (i) the Seller subdividing or amalgamating any lots in the Estate (other than the Land);
 - (j) the transfer of any additional land into the Estate;
 - (k) the transfer, dedication or excise of any land out of the Estate;
 - (l) the facilities (if any) within the Estate being made available for use at different times including after Settlement;
 - (m) the Seller carrying out any form of alternative development within the Estate from that intended by the Seller as at the Contract Date;
 - (n) there being commercial and other non-residential uses in the Estate;
 - (o) the Seller using part of the Estate for affordable housing and lots being sold for less than the average market value;
 - (p) the prior use of the Land; and
 - (q) the Seller making changes to the location of any Services in the Land.
- F DEPOSIT**
20. **Bank Guarantee**
- NOTE: The terms of the Bank Guarantee must be strictly complied with.**
- 20.1 In order to satisfy the requirements of this Special Condition the Bank Guarantee must strictly comply with the requirements set out in the definition of Bank Guarantee in Special Condition 3.1(b).

- 20.2 Instead of paying the Deposit as a cash payment, the Buyer may lodge with the Seller's Solicitor a Bank Guarantee which satisfies the requirements of this Special Condition.
- 20.3 If the Buyer has already paid the Deposit as cash, the Buyer may at any time elect to replace that cash Deposit with a Bank Guarantee which satisfies the requirements of this Special Condition.
- 20.4 A call may be made upon a Bank Guarantee lodged pursuant to this Special Condition if:
- (a) this contract has been terminated for default by the Buyer and the Seller has declared the Deposit forfeited; or
 - (b) the Buyer has delivered a Bank Guarantee which is limited by time and the Buyer has failed (whether or not requested to do so by the Seller) to replace the Bank Guarantee with either a cash deposit or a further Bank Guarantee at least 10 Business Days before the expiry date of the Bank Guarantee.
- 20.5 The Seller may, in its total discretion, accept a Bank Guarantee which does not comply with the provisions of this Special Condition. If that happens, if directed by the Seller at any time before Settlement to do so, the Buyer must, at the Buyer's expense, within 10 Business Days after direction, replace the Bank Guarantee with an instrument which complies with the requirements of this Special Condition or a cash payment of the Deposit. This is an Essential Term.
- 20.6 The Buyer must not do anything which may cause the Bank Guarantee to be withdrawn, revoked, terminated, compromised or limited in any way.
- 20.7 If before settlement of this Contract the Seller determines on reasonable grounds that a Bank Guarantee is no longer acceptable to the Seller, then the Seller may require the Buyer by notice in writing to pay the Deposit to the Deposit Holder by electronic funds transfer or cheque in lieu of or in exchange for the Bank Guarantee. The Buyer agrees to do this on or before 10 Business Days after request.
21. **Deposit Bond**
- 21.1 The Seller may, in its total discretion and without any obligation to do so, accept from the Buyer as security for payment of the Deposit a Deposit Bond to be lodged with the Seller's Solicitor which may or may not be limited as to time.
- 21.2 If that happens, the Buyer must, as an Essential Term:
- (a) at the Buyer's expense, within 10 Business Days after direction by the Seller, replace the Deposit Bond with a cash deposit or compliant Bank Guarantee; or
 - (b) if the Deposit Bond is limited as to time, and without any direction by the Seller to do so, replace the Deposit Bond with a replacement Deposit Bond (which the Seller may or may not accept in its total discretion), cash payment of the Deposit or compliant Bank Guarantee not less than 10 Business Days before its expiry date.
- 21.3 The Seller's Solicitor may call upon a Deposit Bond lodged under this Special Condition if:
- (a) this contract has been terminated for default by the Buyer and the Seller has declared the Deposit forfeited; or
 - (b) the Buyer has delivered a Deposit Bond which is limited by time and the Buyer has failed (whether or not directed to do so by the Seller) to replace the Deposit Bond with a replacement Deposit Bond, cash Deposit or compliant Bank Guarantee at least 10 Business Days before expiry of the Deposit Bond and the terms of the Deposit Bond permit a call to be made on it without termination of this contract by the Seller.
- 21.4 The Buyer must not do anything which may cause the Deposit Bond to be withdrawn, revoked, compromised, terminated or limited in any way.
- 21.5 If before settlement of this Contract the Seller determines on reasonable grounds that a Deposit Bond is no longer acceptable to the Seller, then the Seller may require the Buyer by notice in writing to pay the Deposit to the Deposit Holder by electronic funds transfer or

cheque in lieu of or in exchange for the Deposit Bond. The Buyer agrees to do this on or before 10 Business Days after request.

22. Calling on Bank Guarantee or Deposit Bond

22.1 The Seller or the Seller's Solicitor is not required to notify the Buyer that:

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

as a precondition to a call being made.

22.2 If the Seller's Solicitor calls upon the Bank Guarantee or Deposit Bond, the proceeds received must be dealt with in accordance with the LSA and the terms of this contract.

22.3 The Deposit Holder and the Seller's Solicitor are not liable for the loss of the Bank Guarantee or Deposit Bond or for making any call on or demand under the Bank Guarantee or Deposit Bond unless that action occurs as a result of or in consequence of an act committed or omitted in personal, conscious or fraudulent bad faith by the Deposit Holder and the Seller's Solicitor. All persons claiming any beneficial interest in or over the Bank Guarantee or Deposit Bond are deemed to take notice of and are subject to the protection conferred by this Special Condition upon the Deposit Holder / Seller's Solicitor.

23. Deposit Holder Authority, Release and Indemnity

23.1 The Parties agree that:

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

23.2 Provided that the Deposit Holder has acted honestly and in good faith, each Party releases the Deposit Holder from and separately indemnifies the Deposit Holder in respect of any liability for any loss or damage

suffered or incurred by the Party as a direct or indirect consequence of or in connection with any act or omission on the part of the Deposit Holder related to its duties as stakeholder, including, without limitation, where the Deposit Holder pays the Deposit to a Party and it is subsequently determined that the payee was not entitled to the Deposit.

23.3 The Parties acknowledge and agree that:

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

G SETTLEMENT

24. Settlement Date

24.1 If Special Condition 5.1 applies, the Settlement Date is the later of:

- (a) a date that the Seller appoints in a notice to the Buyer which must:
 - (i) not be earlier than at least 14 days after the date on which the Seller gives to the Buyer the registered plan and statement referred to in section 14(3) of the LSA;
 - (ii) be at least 7 days after the date on which the Seller gives the notice appointing the Settlement Date; and
 - (iii) be at least 14 days after the Contract Date; and
- (b) if, at the time the Seller's notice is given, this Contract is subject to the Finance Condition, 14 days after the date the Buyer notifies the Seller that the Finance Condition is satisfied or waived by the Buyer.

- 24.2 If Special Condition 5.1 does not apply, the Settlement Date is the later of:
- (a) 14 days after the Contract Date; and
 - (b) if this contract is subject to the Finance Condition, 14 days after the date the Buyer notifies the Seller that the Finance Condition is satisfied or waived by the Buyer.
25. **Time and Place for Settlement**
- 25.1 This is an Essential Term. Settlement must take place on the Settlement Date:
- (a) in the Brisbane CBD;
 - (b) at a time nominated by the Seller, and if no time is nominated, at 3.00pm;
 - (c) at a place nominated by the Seller, and if no place is nominated, at the offices of the Seller's Solicitor in Brisbane; and
 - (d) between the hours of 9.00 am and 5.00 pm.
- 25.2 The Seller may, at any time before Settlement, by notice to the Buyer, extend the Settlement Date on any number of occasions by up to a total period of 90 days. If this happens, time remains of the essence of this contract notwithstanding the extensions.
26. **Extensions of the Finance Date and Settlement Date by the Buyer**
- 26.1 Nothing in this Special Condition:
- (a) is a representation by the Seller that it will agree to an extension of the Finance Date or the Settlement Date;
 - (b) creates any entitlement for the Buyer to an extension of the Finance Date or the Settlement Date; or
 - (c) alters time being of the essence of this contract.
- 26.2 If the Buyer requests an extension of the Finance Date, the Buyer acknowledges and agrees that the Seller may charge the Buyer an amount of \$55.00 for each granted extension after the first granted extension to
- cover the Seller's expenses associated with each extension.
- 26.3 If the Buyer requests an extension of the Settlement Date, the Buyer acknowledges and agrees that the Seller may charge the Buyer an amount of \$220.00 for each extension of the Settlement Date granted to cover the Seller's expenses associated with each extension.
- 26.4 The Buyer must pay any amounts payable pursuant to Special Conditions 26.2 and 26.3 by way of Bank or trust cheque or an adjustment at Settlement as directed by the Seller. This is an Essential Term.
- 26.5 Notwithstanding any other term of this contract, if the Finance Date or the Settlement Date is extended:
- (a) by agreement between the Parties;
 - (b) by a Party exercising a right to extend the Finance Date or the Settlement Date; or
 - (c) by operation of a provision of this contract which extends the Finance Date or the Settlement Date,
- time is of the essence in respect of the extended Finance Date or Settlement Date as the case may be.
27. **Security Interest**
- 27.1 If at settlement anyone holds a Security Interest over the Seller's assets, the Buyer agrees to accept from the Seller either:
- (a) a written statement from the grantee confirming the Property is not subject to the Security Interest;
 - (b) a written statement from the grantee releasing the Property from the Security Interest in the grantee's standard format; or
 - (c) a written statement from the Seller confirming that the Property is not subject to the Security Interest.
- 27.2 The Buyer acknowledges that if there are no Included Chattels being sold, then this Special Condition will not apply as there will be no Security Interest as unimproved land is being sold under this Contract.

28. Releases and Title

- 28.1 If the Land is subject to mortgage(s) or other adverse Encumbrance(s) (except those authorised or permitted by this contract) then the Buyer must accept on Settlement an unstamped but signed release of mortgage(s) or withdrawal, surrender, removal or revocation of such adverse encumbrance(s) by whatever means permitted by the relevant authority and any other documents or declarations necessary to procure the stamping and registration of that release or withdrawal.
- 28.2 No paper certificate of title for the Title will be provided at Settlement. The Buyer acknowledges that the titling arrangements practised by the Queensland Titles Registry are computerised so that a paper certificate of title is not issued unless requested by the registered owner. The Seller will not request a paper certificate of title and the Buyer must not Object to not receiving a paper certificate of title at Settlement.
- 28.3 calculated under clause 2.6(4) of the Terms of Contract (as amended);
- (b) the Buyer must accept the Seller's undertaking (which is hereby given) that it will pay its proportion of land tax up to and including the Settlement Date;
- (c) the Buyer will not be entitled to any retention from the Balance Purchase Price, nor will the Buyer require payment of, any outstanding land tax on or before the Settlement Date;
- (d) land tax will be treated as paid at Settlement; and
- (e) no cheque will be provided at Settlement in respect of the specified amount.
- 29.3 At Settlement:

H ADJUSTMENTS

29. Adjustments

- 29.1 If there is no separate assessment of Outgoings (other than land tax) for the Land at the Settlement Date, then at the Seller's election:
- (a) Outgoings (other than land tax) are to be adjusted on the amount that the Seller's Solicitor, acting reasonably, determines as the basis on which the adjustment will be made; or
- (b) the Buyer must accept the Seller's undertaking (which is hereby given) that it will pay its proportion of any Outgoings up to and including the Settlement Date on issue of a separate assessment, and no adjustment will be made at Settlement.
- 29.2 If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the following will apply:
- (a) at the election of the Seller, land tax will be apportioned on the greater of the specified amount or the amount
- 29.4 The Buyer agrees that the provisions contained in this Special Condition are balanced, fair and reasonable and are aimed to facilitate an uncomplicated process to effect Settlement.
- 29.5 If Settlement does not occur on the Settlement Date due to the Buyer's default, or the Settlement Date is extended by agreement between the Parties following a request for an extension by the Buyer, then Outgoings, at the Seller's election, may be adjusted as if Settlement took place on the original Settlement Date determined under this contract.
30. **Settlement Statement**
- 30.1 Prior to Settlement, the Seller may give to the Buyer a Settlement Statement.

- 30.2 If the Buyer considers that there is an error or omission in respect of anything contained in the Settlement Statement, the Buyer must, within 3 Business Days after receipt of the Settlement Statement, and in any event before the Settlement Date, give to the Seller a notice which clearly specifies the error or omission.
- 30.3 If the Buyer does not comply with the requirements of Special Condition 30.2:
- (a) the Buyer cannot later Object or assert that the Seller was not ready, willing or able to effect Settlement because of an error or omission in the Settlement Statement; and
 - (b) the Settlement Statement is taken to be correct and to list all the Settlement Materials.
- 30.4 The purpose of this Special Condition is to require the Buyer to notify the Seller well before the time for Settlement if the Buyer considers that there has been an error in the calculation of Settlement adjustments and figures or an omission in the list of Settlement Materials and to prevent the Buyer from Objecting at Settlement on the basis of an error or omission that could have been drawn to the Seller's attention earlier.
- 30.5 The Seller may, at any time before Settlement, give the Buyer an updated or amended Settlement Statement and the provisions of this Special Condition apply to that updated Settlement Statement.
- 30.6 Nothing in this Special Condition prevents:
- (a) the Seller from recovering any shortfall in payment of the Purchase Price after Settlement; and
 - (b) a Party from requiring any adjustment to be made between the Parties after Settlement in relation to Outgoings if it is discovered that Outgoings were not apportioned in accordance with this contract.
- I THE BUYER**
31. **Buyer a Trustee**
- 31.1 Unless otherwise disclosed in the Reference Schedule, the Buyer promises the Seller that the Buyer is not buying the Property as trustee of any trust.
- 31.2 If the Buyer is described in the Reference Schedule as being a trustee of a trust, each promise made by the Buyer in this contract which is in the nature of a representation or a warranty is true on the basis that each such representation or warranty is made by the Buyer personally and as trustee for the relevant trust.
- 31.3 If the Buyer is described in the Reference Schedule as being trustee of a trust, then the Buyer promises the Seller that:
- (a) the Buyer is the sole trustee of the trust;
 - (b) the Buyer enters into this contract as part of the due administration of the relevant trust and that this contract is for the benefit of the relevant trust and its beneficiaries;
 - (c) the Buyer is empowered by the trust instrument for the relevant trust to enter into and perform this contract in its capacity as trustee of the trust (there being no restriction on or condition of it doing so);
 - (d) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust instrument for the relevant trust for it to enter into and perform this contract;
 - (e) no property of the relevant trust has been re-settled or set aside to any other trust;
 - (f) the relevant trust has not been terminated and no event for the vesting of the assets of the trust has occurred;
 - (g) the trust instrument for the relevant trust complies with all applicable laws;
 - (h) the Buyer has complied with its obligations and duties under the trust instrument for the relevant trust and at law;
 - (i) the Buyer has taken all steps necessary to entitle it to be indemnified from the assets of the trust against any liability under this contract;

(j) notwithstanding anything in the trust deed or any other document, the Buyer (in its own capacity and not in its capacity as trustee of the trust) will be and at all times remain personally liable to the Seller for the performance, fulfilment and observance of the obligations contained in this Contract; and

(k) the Buyer will, upon request, deliver to the Seller copies of all documents establishing or amending the trust or making appointments under the trust.

32. Age of Majority

32.1 The Buyer, if a natural person, whether buying as a trustee of a trust or for its own benefit, promises the Seller that the Buyer is at least 18 years of age at the Contract Date.

33. Personal Guarantee

33.1 This Special Condition is an Essential Term and applies if the Buyer:

- (a) is a company;
- (b) is a company trustee of a trust; or
- (c) is an individual trustee of a trust.

33.2 If this Special Condition applies, the Buyer must arrange that its performance under this contract is guaranteed by:

- (a) in the case of the Buyer being a company, the directors of the company, and if required by the Seller, the shareholders of the company;
- (b) in the case of the Buyer being a company and a trustee of a trust, the directors of the company, and if required by the Seller, the shareholders of the company and the principal beneficiaries of the trust; and
- (c) in the case of the Buyer being an individual trustee of a trust, the Buyer in its personal capacity and, if required by the Seller, the principal beneficiaries of the trust.

33.3 The Buyer must arrange for the Guarantee and Indemnity to be signed by the Guarantor

and witnessed before the Seller signs this contract.

33.4 The Buyer, and the Guarantor by signing the Guarantee and Indemnity, acknowledge that if the Seller transfers or assigns its interest in this contract, the Seller also assigns or transfers the benefit of the Guarantor's obligations and indemnities under the Guarantee and Indemnity to the transferee or assignee.

33.5 If, despite the failure by the Buyer to comply with Special Conditions 33.2, 33.3 and 33.4 the Seller signs this contract, the Seller's action in signing this contract is not taken as a waiver of the Buyer's obligation under this Special Condition and the Seller may, in its total discretion, exercise any of its rights for the Buyer's default including under clause 9 of the Terms of Contract.

34. Insolvency or Death of Buyer

34.1 The Buyer is in default of this contract, if, before Settlement, the Buyer:

- (a) being a company:
 - (i) resolves to go into liquidation;
 - (ii) enters into a scheme of arrangement for the benefit of its creditors;
 - (iii) is ordered to be wound up or is placed in provisional liquidation; or
 - (iv) is put into the control of a receiver and manager, official manager or administrator; or
- (b) being a natural person enters into a scheme of arrangement, composition or assignment with or in favour of its creditors or becomes bankrupt.

34.2 If, before Settlement, the Buyer dies then the Seller may terminate this contract. If this happens:

- (a) the Deposit must be released to the Buyer's estate or trustee as the case may be; and
- (b) neither Party has any further Claim against the other Party.

34.3 For the purposes of this Special Condition "Buyer" includes any of the parties that comprise the Buyer.

J HOUSING COVENANTS

35. Housing Covenants

35.1 The Buyer acknowledges that:

- (a) the Land forms part of the Estate which is a quality residential community; and
- (b) it is necessary and in the interest of all buyers of land within the Estate that the Seller exercises supervision and control to ensure quality in respect of the design and construction standard of dwellings, other improvements and landscaping within the Estate and other matters generally.

35.2 In consideration for the Seller entering into this contract, the Buyer promises the Seller that the Buyer will abide by the terms of the Housing Covenants. This is an Essential Term of this contract.

35.3 The Buyer must not sell, transfer, dispose of, lease or in any other way part with possession of the Land without first obtaining a covenant from any disponee in favour of the Seller agreeing to be bound by the Housing Covenants. The covenant to be obtained from the new buyer or transferee is to be in the form of the Deed Poll.

35.4 The Buyer must not lease, licence or part with possession of the Land without first delivering to the tenant, licensee or occupier a copy of the Housing Covenants.

35.5 The Buyer hereby indemnifies the Seller and agrees to keep the Seller indemnified against all loss and damage incurred by the Seller as a result or indirect result of the Buyer's failure to comply with the obligation contained in Special Conditions 35.2, 35.3 and 35.4.

35.6 The Buyer acknowledges the Seller may seek an injunction from a court to prevent the Buyer breaching its obligations under this Special Condition.

35.7 The Buyer acknowledges that the Seller has and reserves the right to:

(a) vary, exclude or elect not to enforce all or any part of the Housing Covenants; and

(b) interpret the Housing Covenants and the intent of the Housing Covenants,

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

35.8 The Buyer must not Object to the Seller exercising any of its rights under Special Condition 35.7 and releases the Seller from any Claim resulting from the Seller exercising those rights provided that the exercise of such rights does not:

- (a) cause a material detraction from the character or standard of the Estate; or
- (b) have a direct material adverse effect on the use or value of the Land.

35.9 The Buyer and the Seller agree that all of the covenants and agreements in the Housing Covenants remain in full force and effect against the Buyer and the Buyer's successors, administrators and assigns in favour of the Seller and its successors, administrators and assigns notwithstanding settlement of this contract and the registration of a transfer of the Land in favour of the Buyer.

K DEVELOPMENT APPROVAL

36. Development Approval

36.1 The Buyer acknowledges:

(a) the Development Approval (and any development and operational works approvals which apply to the Property) (**Conditions of Subdivision**) may contain conditions affecting the construction of a dwelling and other improvements and landscaping on the Land;

(b) having read the Conditions of Subdivision and further acknowledges that the Buyer is bound by the Conditions of Subdivision; and

(c) any Conditions of Subdivision where the timing for the condition is prior to the "commencement of use" (or similar) will fall upon the Buyer to satisfy those conditions if they are

- not already satisfied prior to Settlement.
- 36.2 The Buyer has no right to Object as a result of the Conditions of Subdivision which may or may not affect the Property.
- 36.3 The Conditions of Subdivision set out extensive conditions, requirements, rules and regulations in respect of the development of the Estate generally and specifically in relation to the building of improvements on the Land. Without any limitation whatsoever, the Conditions of Subdivision set out various requirements including easements to be granted. The Seller directs the Buyer's attention to the following conditions of the Conditions of Subdivision:
- (a) Condition 4 - Limitation of Use - Dwelling house (Small Lot)
 - (b) Condition 5 - Dwelling House (Small Lot) - Front Boundary Setback
 - (c) Condition 6 - Dwelling House (Small Lot) - Built to Boundary Walls
 - (d) Condition 7 - Dwelling House (Small Lot) - Rear Boundary Setback
 - (e) Condition 8 - Dwelling House (Small Lot) - Site Cover
 - (f) Condition 9 - Dwelling House (Small Lot) - Side Boundary Setback
 - (g) Condition 16 - Grant Easements
 - (h) Condition 23 - Retaining Walls
 - (i) Condition 40 - Up Stream Stormwater Drainage Connection
 - (j) Condition 50 - Fire Ant Movement Controls
 - (k) Condition 56 - Streetscape Works - Subdivision New Road
 - (l) Condition 58 - Grant Easements
 - (m) Condition 63 - Retaining Walls
 - (n) Condition 75 - Up Stream Stormwater Drainage Connection
 - (o) Condition 82 - Damage to Trees on Adjoining Lots
- (p) Condition 83 - Fire Ant Movement Controls
- 36.4 Subject to Special Condition 39, the Buyer promises the Seller that it has obtained a copy of the Conditions of Subdivision and that it has read the Conditions of Subdivision before signing this contract and has satisfied itself in regard to all matters contained within the Conditions of Subdivision.
- 36.5 The Buyer acknowledges that the Conditions of Subdivision attach to the Land and accordingly the Buyer is bound by the conditions of the Conditions of Subdivision.
- 36.6 The Buyer acknowledges that the Housing Covenants are not a limitation of the conditions of the Conditions of Subdivision.
- L EASEMENTS**
- 37. Easements**
- 37.1 The Land is sold subject to the benefit and burden of easements either benefitting or burdening the Land:
- (a) shown on the Disclosure Plan and/or Survey Plan;
 - (b) required under the Conditions of Subdivision;
 - (c) as set out in the Easement Schedule; and
 - (d) which are permitted by this contract.
- 37.2 The Buyer acknowledges and agrees to be bound by the terms of such easement and other encumbrances (for example, a restrictive covenant) required by the Conditions of Subdivision (if applicable).
- 37.3 The Seller may, in its total discretion:
- (a) make changes to any of the easements set out in the Easement Schedule;
 - (b) make changes to any of the terms of any easement disclosed in this contract; and
 - (c) put into effect any additional easements which may either benefit or burden the Land,

and the Buyer must not Object due to the Seller exercising any such right provided that there is no direct material adverse effect on the use of or the value of the Land.

37.4 The Buyer acknowledges having received and read a copy of the Easement Schedule prior to signing this contract and accepts the easements disclosed in the Easement Schedule as applying to the Land (if applicable).

37.5 The Buyer is not entitled to Object because of any easement not disclosed in this contract or any amendment to an easement disclosed in this contract, provided only that the easement or amendment to an easement does not have a direct material adverse effect on the use or value of the Land.

37.6 Any easement will be on the draft terms set out in Annexure G (if any) or the relevant Authority standard easement terms (from time to time) or otherwise on terms and conditions which are satisfactory to the Seller in its absolute discretion including but not limited to terms and conditions regarding liability for costs for maintaining the easement and which restrict or prohibit development within the easement areas and restrict or prohibit the Buyer's maintenance, use and/or vegetation rights within the easement areas.

37.7 The Buyer acknowledges that there may be mains, pipes, wires or connections of water, sewerage, drainage, gas, electricity, telephone, radio and television or other system or Service within the Land which belong to an Authority that may not be protected by registered easement and that such Authority may have statutory rights over such infrastructure in the Land and the Buyer must not Object or interfere with such installations.

37.8 If there is an easement burdening the Land that is not permitted by this Special Condition, then the Buyer's only right is to terminate this contract and obtain a refund of the Deposit.

37.9 If the Seller elects, for any reason in the Seller's absolute discretion, not to register any easement(s) or encumbrance(s) disclosed to the Buyer:

- (a) that burdens the Land, the Buyer agrees to accept the Land without the burden of the easement(s) or encumbrance(s) and will not Object; or

- (b) that benefits the Land and has a material adverse effect on the use or value of the Land, the Buyer may terminate this contract by notice to the Seller in which case this contract will be at an end and the Seller must refund the Deposit to the Buyer and the Buyer must not make any Claim. This is the Buyer's only remedy.

37.10 For the purposes of this Special Condition:

- (a) a material adverse effect on the use of the Land means a reduction in the useable area of the Land of more than 5% as a direct consequence of the existence of the easement or variation to an easement; and
- (b) a material adverse effect on the value of the Land means a reduction in the value of the Land of more than 5% as a direct consequence of the existence of the easement or variation to an easement.

37.11 If the Seller elects for any reason (in the Seller's absolute discretion), to register an easement(s) or encumbrance(s) after settlement of this Contract, the Buyer must sign and return all documents necessary to register the easement(s) or encumbrance(s) within 5 Business Days after the Seller sends them to the Buyer and will cause its mortgagee (if any) to consent to such easement if the easement is a burdening easement. The Buyer irrevocably appoints the Seller and the Seller's directors and attorneys, severally, to be the Buyer's attorney for the purpose of signing an easement(s) or encumbrance(s) the Buyer does not sign. The Buyer agrees that the power of attorney given under this Special Condition is a "power of attorney given as security" in terms of section 10 of the *Powers of Attorney Act 1998* (Qld) and may:

- (a) not be revoked by the Buyer without the consent of the Seller; and
- (b) be exercised even if such exercise involves a conflict of duty or the attorney has a personal interest in doing so.

37.12 The Buyer acknowledges and agrees that:

- (a) the Buyer indemnifies the Seller from any cost, loss, expense or damage the Seller may suffer or incur as a

result of the Buyer not complying with this Special Condition 37;

- (b) the Buyer agrees not to Object, make any Claim or lodge any submissions in relation to the operation or effect of Special Condition 37; and

- (c) for clarity, this Special Condition still applies if the Land is registered at the Contract Date and will not merge on settlement of this Contract.

- (c) this contract is at an end and neither Party has any further Claim against the other; and

- (d) the Deposit paid must be released to the Buyer.

39.3 This Special Condition does not apply if:

- (a) the Buyer has given to the Seller an instrument which has the effect of waiving any cooling off period in relation to this contract; and/or

- (b) the Buyer has obtained pre-contract legal advice in relation to this contract.

M PROMISES

38. Status of Promises

38.1 Where in this contract a promise has been made by a Party:

- (a) the promise amounts to a representation, warranty and assurance made by the Party to the other Party;
- (b) the Party to whom the promise is made is entitled to rely on that promise; and
- (c) the Buyer acknowledges that it has made the promise as an inducement outside of this contract to the Seller to enter into this contract to sell the Property.

39. Retraction of Acknowledgements or Promises

39.1 This Special Condition applies subject to Special Condition 39.3 below in relation to acknowledgments or promises made by the Buyer in these Special Conditions, which promises are expressed to have been made subject to this Special Condition.

39.2 If the Buyer wishes to retract or vary any or all of the acknowledgments or promises in respect of which this Special Condition applies, the Buyer must give notice to the Seller of such within 5 Business Days after the Contract Date in which case:

- (a) the Buyer is taken to have given the Seller notification that the Buyer terminates this contract;
- (b) the Seller is taken to have accepted the Buyer's notification of termination;

N ADMINISTRATIVE AND OTHER PROVISIONS

40. Transfer Documents

40.1 The Seller must prepare the Transfer Documents.

40.2 If the Buyer is not legally represented and if the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue in Brisbane or an agent of the Office of State Revenue, for stamping prior to Settlement.

40.3 If the Seller's Solicitor has received an undertaking from the Buyer's Solicitor that the Transfer Documents will be used for stamping purposes only pending Settlement, the Seller will, at the relevant time, lend the Transfer Documents to the Buyer's Solicitor without charge for stamping prior to Settlement if the Seller sees fit to do so.

40.4 Each Party authorises the other Party and their solicitor to make any necessary amendments to the Transfer Documents so as to rectify any inaccuracies or complete any omissions so that the Transfer Documents are consistent with this contract and in registrable form only.

40.5 The Buyer must, within 10 Business Days after engaging any solicitor to act on its behalf in relation to this contract and the conveyance of the Land pursuant to it, cause that solicitor to give to the Seller's Solicitor a signed undertaking that the Transfer Documents will be used for stamping purposes only pending Settlement so that, at the relevant time, the Seller can lend the Transfer Documents to

that solicitor without charge for stamping prior to Settlement.

41. Buyer's Obligation to Disclose Rebates etc

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

41.2 The Buyer:

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

42. Further Acts

42.1 Without limiting clause 10.7 of the Terms of Contract, if requested to do so by the Seller, the Buyer must, at its own expense and within a reasonable period of time (and, in any event, before Settlement):

- (a) do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is possible and lawful to do so) or resolve any ambiguity in this contract so as to facilitate this contract being given effect to and being operative and enforceable as between the Parties; and
- (b) do all things, sign all documents, give all necessary consents, enter into all necessary agreements or deeds as requested by the Seller in

order to enable the Seller to perform its obligations under this contract (**Additional Obligations**) and in order to enable Settlement even if Additional Obligations are imposed on the Buyer provided that the rights of the Buyer under this contract are not significantly diminished.

42.2 If the rights of the Buyer under this contract are significantly diminished as a result of a request by the Seller pursuant to Special Condition 42.1, the Buyer must carry out the requested action if:

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

42.3 Without limiting clause 10.7 of the Terms of Contract, if requested to do so by the Seller, the Buyer must, at its own expense, do all things necessary in order to complete any omission, rectify any error, waive any statutory right (so far as it is lawful to do so) or resolve any ambiguity in this contract so as to facilitate this contract being considered by any financier of the Seller as a presale for construction funding purposes.

42.4 If this contract has been exchanged electronically, the Seller may require that this contract is again exchanged in hard (physical paper copy) copy. If that happens, the Buyer agrees to exchange a hard copy of this contract when directed to do by the Seller. This may be required, for example, in order that a funder of the Seller agrees to accept the sale made under this contract to be a qualifying pre-sale for funding qualification purposes.

43. Interpretation to Favour Binding Contract

43.1 Subject to the terms of this contract, the Parties acknowledge that it is their intent that the Seller is obliged to sell and the Buyer is obliged to buy the Property on the terms set out in this contract.

43.2 The provisions of this contract will so far as possible be construed so as not to be invalid,

illegal, inoperative or unenforceable in any respect, but if any provision on its true interpretation is illegal, invalid, inoperative or unenforceable:

- (a) that provision will, so far as possible, be read down to the extent that may be necessary to ensure that it is not illegal, invalid, inoperative or unenforceable and as may be reasonable in all circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot be read down, the provision or part will be deemed to be void and severable and the remaining provisions of this contract will not in any way be affected or impaired.

44. Measurement of Time

44.1 In relation to measurement of time:

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

45. Legislative Termination Rights

45.1 This Special Condition applies if the Seller forms a view, reasonably held, that the Buyer is or has become entitled to rescind, declare void, cancel, withdraw from or terminate this contract or declare itself not bound by this contract under any legislative provision (**Legislative Termination Right**).

45.2 If this Special Condition applies, then during the time that the Buyer is entitled to exercise the Legislative Termination Right, the Seller may give a notice to the Buyer requiring that the Buyer, within a period of 10 Business Days after the notice is given, either:

- (a) exercise its Legislative Termination Right (and cancel, withdraw from or terminate this contract); or
- (b) by notice to the Seller affirm this contract and waive the benefit of the Legislative Termination Right,

failing which the Seller may, at any time after expiry of the 10 Business Day period, and while the Buyer is entitled to exercise the Legislative Termination Right, itself terminate this contract. If that happens:

- (c) the Deposit must be released to the Buyer; and
- (d) the Buyer has no further Claim against the Seller.

46. No Caveats

46.1 The Buyer must not lodge or register any caveat over the Parcel or any other land owned by the Seller. This is an Essential Term.

46.2 Nothing in Special Condition 46.1 limits any rights of the Buyer to lodge or register a caveat over the Land after Title is created.

46.3 The Buyer irrevocably appoints the Seller, its officers, employees and solicitors, severally, as the Buyer's attorney to sign any document (including a withdrawal of caveat) and do anything in order to procure the release / withdrawal of any caveat lodged or registered by the Buyer in contravention of the prohibition contained in Special Condition 46.1.

46.4 The Buyer agrees that the power of attorney given under Special Condition 46.3 is a "power of attorney given as security" in terms of Section 10 of the *Powers of Attorney Act 1998* and may:

- (a) not be revoked without the Seller's consent;
- (b) be exercised even if this involves a conflict of duty; and
- (c) be exercised by the attorney even if the attorney has a personal interest in doing so.

46.5 The Buyer may lodge a priority notice over the Land with the Queensland Titles Registry but not before the date which is 7 days before the date fixed as the Settlement Date.

47. Instalment Contracts

47.1 If:

- (a) it is found that this contract is an Instalment Contract;

(b) any interpretation of any annexure or Special Condition causes this contract to be or become an Instalment Contract; or

(c) any negotiation or agreement reached between the Seller and the Buyer following formation of this contract causes this contract to be or become an Instalment Contract,

then the Buyer consents for the purposes of Section 73(1) of the PLA Act to the Seller:

(d) mortgaging and or charging the Parcel (including the Land) on terms and conditions the Seller in its discretion determines; and

(e) selling parts of the Parcel (for example, other lots in the Estate) to other buyers.

47.2 Despite any contrary provision in this contract including a contrary provision contained in the Special Conditions, the Buyer is not bound to make a payment or payments of amounts which total in excess of the Prescribed Percentage (including any variations) without becoming entitled to receive a conveyance in exchange for the payment or payments. If the Buyer pays more than the Prescribed Percentage as deposit, the Buyer is entitled to a refund of the amount in excess of the Prescribed Percentage upon request to the Seller. If the Seller refunds an amount paid in excess of the Prescribed Percentage, the Buyer will still be required to pay the Purchase Price less any cash deposit paid at Settlement.

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

47.4 The provisions of this Special Condition are mandatory overriding provisions and override any other provision of this contract. The Buyer is not bound to make payment or payments of amounts which total in excess of the Prescribed Percentage without being entitled to receive a conveyance in exchange for the payment or payments.

48. **Electronic Transactions Act**

48.1 For the purposes of Sections 11 and 12 of the *Electronic Transactions (Qld) Act 2001* and the *Electronic Transactions Act 1999 (Cth)*,

the Buyer and Seller consent to information being given by electronic communication.

49. **Contract Execution, Counterparts & Exchange**

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

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

49.3 This contract, including counterparts of it, may be exchanged by any means, including electronically.

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

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

49.6 Each person who signs this contract as an authorised officer, agent, signatory or trustee of a Party warrants and represents to the other Party that at the date the person executed this contract they had full authority to execute this contract in that capacity.

50. **Contract Date**

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

51. **Performance of Contract**

51.1 The Seller is entitled to perform this contract in a manner which is most beneficial to it.

52. **Privacy**

52.1 The Buyer consents to:

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

52.2 By signing this contract, the Buyer agrees to Mirvac using its personal information to

promote its products and services. If the Buyer no longer wishes to receive promotional information from Mirvac, the Buyer may advise Mirvac of that wish. The Mirvac Group Privacy Policy (available on www.mirvac.com) contains information about how the Buyer may send the request to Mirvac.

52.3 The Buyer acknowledges that:

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

52.4 The covenants and agreements in this contract given by the Buyer to Mirvac are made and given for the benefit of Mirvac pursuant to section 55 of the *Property Law Act 1974* in consideration of the Seller selling the Property to the Buyer.

53. **Assignment**

53.1 Subject to the Seller complying with Special Condition 53.2(a):

- (a) the Seller may transfer or assign its interest or a part of its interest in the Property or the Parcel (or any part of it) to another person (**Dealing**); and
- (b) the Buyer consents to any Dealing, including for the purpose of any consent required under the PLA.

53.2 If the Seller proposes to effect a Dealing:

- (a) before the Dealing is completed, the Seller must procure the Third Party to execute a Novation Deed; and
- (b) the Buyer waives any cooling off period applicable as a result of the Dealing and the Buyer must, if requested by the Seller or Third Party, execute any document to confirm such waiver.

- 53.3 If the Seller requires, the Buyer and any Guarantor must be parties to the Novation Deed to covenant in favour of the Third Party to perform their respective obligations under this contract and the Guarantee and Indemnity. The Buyer must execute, and must procure the Guarantor to execute, the Novation Deed before the Dealing is completed.
- 53.4 If:
- (a) under a Dealing, the Seller transfers or assigns its interest in the Property or the Parcel (or any part of it); and
 - (b) the Seller complies with Special Condition 53.2(a) in relation to that Dealing,
- on completion of that Dealing, the Seller is released from any further obligations under this contract.
- 53.5 On completion of a Dealing:
- (a) the Seller may transfer to the Third Party's nominated deposit holder the Deposit (and the Seller and the Buyer irrevocably authorise and direct the Deposit Holder to facilitate such transfer); or
 - (b) if the payment of the Deposit has been secured by the provision of a Bank Guarantee which is not assignable, the Seller may require the Buyer to provide to the Third Party's nominated deposit holder a replacement Bank Guarantee or cash Deposit within 10 Business Days of the Seller asking for it.
- 53.6 The Buyer may not assign or transfer or attempt to assign or transfer the Buyer's interest under this contract without the prior written consent of the Seller. This is an Essential Term.
- 53.7 The Seller may:
- (a) mortgage or charge its interest in the in the Property or any parcel of land from which the Land is to be created;
 - (b) obtain further advances on the security of the Property or any parcel of land from which the Land is to be created; and
- (c) enter into joint ventures or other agreements in connection with the development of the Property or any parcel of land from which the Land is to be created.
- 53.8 The Buyer consents to the Seller doing any of the things mentioned in this Special Condition including for the purpose of any consent required under section 73 of the PLA.
- 53.9 In this Special Condition, the Seller's interest in this contract means the benefit of the obligations owed to the Seller by the Buyer and any Guarantor.
54. **Variation**
- 54.1 An amendment or variation of this contract is not effective unless it is in the form of a notice in writing and signed by or on behalf of the Parties by a person holding the requisite authority to bind the relevant Party.
- 54.2 Only a partner of the Seller's Solicitors' firm, the Seller itself if a natural person or a director, executive or manager of the Seller has authority to bind the Seller to an amendment or variation of this contract.
- 54.3 The Buyer itself or any partner or employee of the Buyer's Solicitors' firm has authority to bind the Buyer to an amendment or variation of this contract.
55. **Waiver**
- 55.1 No waiver of any right under this contract takes effect unless in the form of a notice in writing, signed by or on behalf of the Party bound, by a person holding the requisite authority to bind the relevant Party. The provisions of Special Condition 54 will apply to any question of authority under this Special Condition.
- 55.2 In the absence of an effective waiver, no failure or forbearance by a Party to insist upon any right to performance of a condition or obligation of the other Party can amount to, under any circumstances, a waiver, an election between existing rights, a representation sufficient to ground an estoppel or a variation whereby that other Party is relieved or excused from performance of such condition or obligation.
- 55.3 A waiver is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

56. Entire Agreement

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

56.2 The Buyer promises the Seller that the Buyer has not been induced to enter into this contract by any representation or assurance made by or on behalf of the Seller or its agents or any other Party which is not set out in this contract.

56.3 The Buyer promises the Seller that it has not relied on any artist's impression, model, display house, plan, sketch, specification or sales aid of any description except the documents contained in this contract.

57. Seller's Access Licence after Settlement

57.1 To facilitate the progressive development of the Estate, the Buyer irrevocably grants the Seller and any nominees of the Seller including any Authority and NBN Co and any suppliers for NBN Co (**Nominee**) (including any employee, contractor, consultant or agent of the Seller) a licence to enter and remain on the Land after the Settlement Date as is reasonably required by the Seller or its Nominee to undertake works of any kind necessary or incidental to install or establish utility infrastructure and utility services and connections, thereto, including the following works:

- (a) to complete and/or rectify any works required by the approvals granted to the Seller for the development for the Estate (of which the Land forms part) including but not limited to civil works and the connection of Services to the Land;
- (b) the installation of Pit and Pipe Works and Network Infrastructure;
- (c) excavation and general earthworks;
- (d) the construction of common areas, including roads;
- (e) the construction of such improvements and facilities as may be considered necessary by the Seller to establish utility services and connections thereto; and
- (f) the construction of Services infrastructure whether public or

private including without limitation, connections for sewerage, gas, electricity, communications, water or any other lawful service available to the public,

all of which are collectively called the **Utility Infrastructure Works**.

57.2 The licence fee is \$1.00 payable by the Seller to the Buyer if demanded by the Buyer.

57.3 The Seller or its Nominee may bring onto the Estate (including the Land) any machinery, tools, equipment, vehicles and workmen to facilitate the carrying out of the Utility Infrastructure Works, provided that the Seller does not unreasonably interfere with the Buyer's enjoyment of the Land.

57.4 The covenants and acknowledgements in this contract given by the Buyer to any Nominee are made and given for the benefit of the Nominee pursuant to section 55 of the PLA in consideration of the Seller selling the Property to the Buyer.

57.5 The Buyer acknowledges that it has no right to Object if the Seller or a Nominee exercise their rights or have a right to exercise their rights pursuant to this Special Condition.

57.6 The Seller must:

- (a) so far as reasonably possible cause minimal disturbance to any occupant of the Land; and
- (b) repair any damage caused to the Land,

as a result of the Seller or its Nominee (excluding NBN Co whom the Seller has no control over) exercising its rights under this Special Condition.

57.7 The Buyer must not Object to the continuation of civil or construction works within the Estate after Settlement which may disrupt or inconvenience the Buyer or an occupier of dwelling on the Land.

57.8 The Buyer must not sell, transfer, assign or otherwise dispose of the Land without first delivering to the Seller a deed poll executed by the future buyer, transferee, assignee or dispone in favour of the Seller containing covenants in the same terms (*mutatis mutandis*) as this Special Condition 57 including an obligation for each further buyer, transferee, assignee or dispone to obtain a

- further deed poll from any subsequent buyer, transferee, assignee or dispone. The covenant to be obtained is to be in the form of the Deed Poll.
- 57.9 This Special Condition does not merge on Settlement.
58. **Display Homes**
- 58.1 The Seller may:
- (a) use any lots (other than the Land) in the Estate which are owned by the Seller for a Display Home; and
 - (b) allow any lots (other than the Land) in the Estate to be used for a Display Home.
- 58.2 The Buyer acknowledges that:
- (a) the Seller intends to sell lots in the Estate to a third party builder (**Display Builder**) for the purposes of operating a display home village and associated car park from Lots 87-94, 100-113 and 125-128 as shown on the draft Survey Plan in Annexure E) (**Display Village**);
 - (b) the extent of the Display Village is proposed only at this time and the extent of the Display Village may increase or decrease and the Buyer must not Object;
 - (c) the Display Village is intended to be operated for a period of at least 2 years from the date the construction of the display homes in the Display Village are completed (being approximately 12 months after settlement of the sale of the lots in the Display Village to the Display Builder); and
 - (d) the Display Village will be operated by the Display Builder and not the Seller.
- 58.3 The Buyer will not make any Claim against the Seller or Object because of this Special Condition 58, including the operation of the Display Village.
59. **Notice of Default by Buyer before termination**
- 59.1 Notwithstanding any other provision of this contract, if the Seller is in default of this contract and such default entitles the Buyer to terminate this contract or exercise any other right, the Buyer must not terminate or purport to terminate this contract or exercise a right or purport to exercise a right without first giving the Seller a notice which requires the Seller to remedy the default within a period of not less than 10 Business Days after the notice is received by the Seller. Only if the 10 Business Day period has expired and the Seller has not remedied the default is the Buyer entitled to terminate this contract or exercise any other right.
60. **Lodgement of transfer**
- 60.1 The Buyer must lodge the Transfer Documents at the Queensland Titles Registry on or before 60 days after Settlement. This Special Condition is an Essential Term and does not merge on Settlement.
61. **Buyer's Acknowledgements – Services and Other Features**
- 61.1 The Services and Other Features Plans show the general location of the Services and the Other Features within the stage that contains the Land. The Buyer acknowledges that the Services and Other Features Plans may be design, preliminary or as constructed drawings and may be revised in the future. Revised drawings (if available) can be obtained by contacting the Seller.
- 61.2 The Buyer acknowledges that:
- (a) the Services and Other Features Plans have been provided for the sole purpose of showing the general location of the Services and Other Features on or immediately adjacent to the Land and any ancillary information shown on the Services and Other Features Plans is to be disregarded by the Buyer;
 - (b) the Seller provides the Services and Other Features Plans in good faith so that the Buyer is aware of the likely locations and alignments of the Services and Other Features;
 - (c) the Seller cannot warrant the ultimate location and alignment of the Services and Other Features given that such locations and alignments are subject to external influences beyond the Seller's

- control (including third party requirements and construction constraints);
- (d) temporary services and redundant services may not be shown on the Services and Other Features Plans;
- (e) redundant services may be abandoned and left in situ; and
- (f) the alignments and locations of the Services and Other Features are subject to change.
- 61.3 The Buyer must not lodge a caveat or make any Claim against the Seller or Object if:
- (a) the Seller does not construct the Services or Other Features by the Settlement Date;
- (b) the Services and Other Features Plans show that sewer, stormwater or roofwater services will be located on the Land;
- (c) any of the Services are constructed inside the boundaries of the Property;
- (d) any redundant Services traverse the Land;
- (e) the alignment or location of the Services or Other Features change from that shown on the Services and Other Features Plans; or
- (f) the Seller does not complete construction of any other land included in the Estate or does not continue to develop any of the land owned by the Seller.
62. **Packaged Pricing**
- 62.1 This Special Condition applies if the Buyer has entered into, or intends to enter into a Building Contract with a Builder. The intention of this Special Condition is to show that other than marketing, the relationship between the Seller, the Builder and the Buyer is the same as if the Buyer had engaged a builder who was not advertised through the Seller's current marketing campaign.
- 62.2 The Buyer acknowledges that:
- (a) the Seller is responsible for the sale of the Land only;
- (b) the Buyer will be required to enter into a separate Building Contract with the Builder or a separate building contract with an alternative builder at the Buyer's election as the Seller is not providing any improvements to the Buyer;
- (c) the Buyer may select an alternative builder at its discretion and is not required to select the Builder;
- (d) the relationship between the Seller and the Builder is limited to marketing and advertising activities only;
- (e) the Builder is not a subsidiary or related entity of the Seller;
- (f) the Seller and the Builder are separate entities and no liability or responsibility is shared by these parties; and
- (g) the Seller is not a party to the Building Contract and the Builder is not a party to this contract.
- 62.3 The Buyer acknowledges that the Seller makes no representations and gives no warranties about the Builder's ability to enter into and perform the Building Contract. The Seller will not be liable for:
- (a) any failure by the Builder to enter into or perform the Building Contract;
- (b) any delays in construction;
- (c) any representations made by the Builder;
- (d) any acts or omissions on the part of the Builder; or
- (e) any loss suffered by the Buyer or any person in any way arising out of or relating to the Building Contract.
- 62.4 Any incentives or concessions advertised or offered by the Builder are offered by the Builder alone and the Seller accepts no liability or responsibility with regard to them.
- 62.5 The Seller does not make any undertaking on behalf of the Builder. The Buyer is to make

their own investigations relating to the Builder's licences, insurances, warranties and other requirements.

representation that it will maintain or enter into such agreement. The Buyer must not Object if the Seller does not maintain or enter into such an agreement with APA.

62.6 The Seller makes no warranty as to the foundation requirements for the proposed Dwelling and is not responsible for the soil testing or design or construction of the foundations.

63.2 If the Seller enters into and maintains the agreement referred to in Special Condition 63.1 then the balance of this Special Condition applies.

62.7 The Seller is not liable for any workplace health and safety requirements relating to the construction of the proposed Dwelling.

63.3 The Buyer agrees that it must and must ensure that its agents, consultants, builders, contractors, invitees and other third parties not related to the Seller or APA cause no other utility assets or any other structure to be constructed directly above and in parallel to any gas main with a horizontal clearance of less than 250 mm. Where other utility assets (not installed by the Seller or APA) are found directly above the gas main, or with inadequate horizontal clearance, the Buyer is responsible for removing the other utility and any rectification costs. The Seller and APA will not be responsible for any costs associated with remediation. The Buyer acknowledges that APA reserves the right to withhold gas supply until the clearance is rectified or if it believes there is a risk to gas assets. The offset of the gas main should meet the following conditions, note that the standard offset is 2.1 metres:

62.8 The Buyer is responsible for any damage caused by the Builder to the civil infrastructure, retaining walls, concrete kerbs, concrete footpaths and crossovers, adjoining properties and other features.

62.9 The Buyer is required to obtain covenant approval for the proposed Dwelling and associated works in accordance with the Housing Covenants.

62.10 Alterations may be required to the proposed Dwelling to ensure the Dwelling and associated works complies with the Housing Covenants as well as any statutory requirements.

62.11 The Buyer is responsible for satisfying itself as to the compatibility of the Dwelling with the Housing Covenants.

(a) horizontal clearance of 250 mm from any other asset; and

62.12 The location of the proposed Dwelling shown on any marketing material has been determined by the Builder. The location of the Dwelling may not comply with statutory requirements or the Housing Covenants. The Buyer is to confirm the proposed location of the Dwelling with the Builder and its compliance with statutory requirements and the Housing Covenants.

(b) vertical clearance of 150 mm when crossing any other assets.

62.13 This contract is not conditional on the Buyer entering into the Building Contract or any other building contract and is not conditional on any part of the Building Contract or any other building contract.

63.4 The following minimum depths of cover will need to be maintained above the gas mains unless greater depth is stipulated by the relevant authority:

(a) 750 mm final cover in new estates (600 mm is before installation of top soil to site);

(b) 800 mm final cover in established areas; and

(c) 1,200 mm final cover under nominated roads.

63. Reticulated Natural Gas

63.1 The Seller may enter into an agreement with APA Group (**APA**) for the installation of natural gas infrastructure. The Buyer acknowledges that this agreement may not be entered into or may terminate at any time and that natural gas infrastructure will only be installed if the agreement remains on foot. The Seller makes no warranty or

63.5 Prior to the Buyer being able to utilise natural gas, the Buyer will need to arrange a gas supply agreement with a natural gas retailer.

63.6 The Buyer acknowledges and agrees that any breach of Special Conditions 63.3 and 63.4 may prevent connection of the Land to the gas infrastructure or may require the Buyer to

incur additional costs in order to connect the Land to the gas infrastructure following Settlement.

63.7 The Buyer agrees and acknowledges that any additional costs payable as a consequence of a breach of Special Conditions 63.3 and 63.4 will be at the cost of the Buyer and the Buyer releases and indemnifies the Seller in this respect.

63.8 APA will determine the best design and use reasonable endeavours to supply every lot to enable prospective residents to connect to natural gas in accordance with the following:

- (a) lots with frontages less than 12.5m to be provided with a minimum of 1 connection access point, ie, one road crossing to one shared property boundary (if main not installed on the same side of the road);
- (b) lots with frontages greater than 12.5m wide (including all corner blocks and duplex sites) to be provided with 2 x connection access points - one at each shared property boundary (if main not installed on the same side of the road along the entire lot frontage);
- (c) 'battle-axe' lots - to be provided with one connection access point from the Local Government verge along the lot frontage. APA cannot install gas mains in private properties without owner's consent/easement acquisitions; and
- (d) Laneways - 'drive through lots' with two frontages - to be provided with one connection access point to one shared property boundary. APA to determine design based on clearances, overall design of reticulation and best accessibility to gas mains. Note: for laneways with reduced verge widths - gas mains cannot be installed in a 'common trench' where the verge is less than 700mm.

63.9 Where easements are required to install gas mains, the Land will be subject to such easement/s and the Buyer will not Object.

63.10 If the Seller maintains an agreement with APA as referred to in Special Condition 63.1 in the stage in which the Land is located, the Seller

discloses to the Buyer and the Buyer acknowledges and accepts that:

- (a) the infrastructure will be located in the street and the Buyer must make all connections of the Land to the infrastructure in the street at its own cost;
- (b) the Buyer may elect to or elect not to connect the Land to the gas infrastructure;
- (c) the Buyer must comply with all directions of APA in relation to access to and construction of structures to and near its infrastructure including sufficient horizontal and vertical clearances and depths; and
- (d) prior to the Buyer being able to utilise natural gas, the Buyer will need to arrange a gas supply agreement with a natural gas retailer.

64. Retaining Walls

64.1 The Seller discloses and the Buyer acknowledges that the Condition of Subdivision requires that:

- (a) all retaining walls including the footings are to be located wholly within the property boundary of a lot;
- (b) retaining walls to stabilise excavation must be set back from the property boundaries to accommodate subsoil drainage without encroaching into the neighbouring lot;
- (c) retaining walls that are greater than 1.0m in height must be vertically and horizontally tiered by a ratio of 1:1 unless an alternative has been approved by the development services; and
- (d) retaining walls facing onto Local Government property (including road reserve and parkland) must not be constructed from timber.

64.2 Accordingly:

- (a) the Land may contain a retaining wall which also affects the lot

adjoining the Land by providing support; or

- (b) the lot adjoining the Land may contain a retaining wall that also affects the Land by providing support.

64.3 From Settlement,(if the Land contains a retaining wall), the Buyer agrees that it is the Buyer's responsibility to (and the Buyer agrees that it will) have a relevantly qualified professional inspect and maintain all retaining walls affecting the Land at regular intervals.

64.4 The Buyer agrees that it must not change or alter any retaining walls that have been

installed by or on behalf of the Seller unless a relevantly qualified professional determines that they have come to the end of their useful life and need replacement.

64.5 The Buyer acknowledges that structural advice regarding the retaining walls should be obtained by the Buyer from a relevantly qualified professional in the event that any dwellings or other structures are proposed to be constructed on the Land in a location adjacent to or near retaining walls installed by or on behalf of the Seller.

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Annexure B Pre-Contract Representations

1. Buyer's Acknowledgment about Seller's Representations

- 1.1 The Buyer acknowledges that no sales or marketing agent has authority from the Seller to make promises, representations, warranties or assurances on behalf of the Seller.
- 1.2 The Buyer confirms and represents that the Buyer is not entering into this contract on the basis of any promises, representations, warranties or assurances other than those hand written below or set out in writing elsewhere in this contract.
- 1.3 The Buyer understands that by the acknowledgment, confirmation and representation given in clauses 1.1 and 1.2 above, it is likely that the Buyer will not be able to sue the Seller in respect of any promise, representation, warranty or assurance other than those set out above or which are set out elsewhere in this contract.

IMPORTANT NOTICE

No sales or marketing agent has authority from the Seller or any related company to make representations or assurances about the Estate or the Property other than representations and assurances which are contained in this contract.

Buying a property is an important investment. If the Buyer is buying the Property on the basis of anything the Buyer has been told or any assurance the Buyer has been given other than what is in this contract, it is important these representations or assurances are identified so they can be confirmed or clarified before the Buyer commits to buy the Property.

The Buyer should set out below any representations or assurances that have been made to the Buyer by the Seller or any sales or marketing agent of the Seller that form part of the reason why the Buyer has elected to buy the Property but which are not included in this contract, the Disclosure Plan or the Disclosure Statement:

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

##

Buyer 1 Sign

##

Buyer 3 Sign

##

Buyer 2 Sign

##

Seller Sign

#

Annexure C Housing Covenants

BETWEEN: MIRVAC QUEENSLAND PTY LIMITED ACN 060 411 207 (Seller)

AND: THE PERSON NAMED AS "BUYER" IN THE REFERENCE SCHEDULE (Buyer)

1 ACKNOWLEDGMENT BY BUYER

1.1 The Buyer acknowledges that the Land is part of a residential subdivision known as Hydeberry. The Buyer covenants that it is desirable and in the interest of all buyers of lots in Hydeberry that the Seller exercises supervision and control to ensure that:

- (a) the Land and other lots in Hydeberry are properly maintained prior to the commencement of construction of a Dwelling thereon;
- (b) a high standard of design and construction of dwellings, Improvements, Outbuildings and Extensions in Hydeberry are maintained; and
- (c) buyers conform with agreed standards in relation to the use of their lots and any Extensions and Improvements erected thereon.

1.2 The Buyer acknowledges that further construction and development works may be carried out at Hydeberry after the settlement of the Contract. The Buyer agrees not to Object or seek to make a Claim in respect of any future construction or associated development or other works in connection with Hydeberry.

1.3 The Buyer consents to and agrees not to raise any Objection or lodge any submissions in respect of any Development Application or amendments to any Development Approvals in respect of Hydeberry or any adjoining or nearby land owned by the Seller.

2 OCCUPATION AND USE

2.1 The Buyer must not:

- (a) use or permit the Dwelling to be used for any other purpose than a single family house or a long term residential rental dwelling;
- (b) reside in the Dwelling until curtain rails and functional curtains, shutters and blinds are installed to all clear glazed windows of the Dwelling visible from any street. The Buyer must not install any sheets or other materials as a temporary measure;
- (c) commence any Building Work, Improvements to the Dwelling or Land or excavation on the Land unless plans and designs for those Building Works and Improvements have been approved by the Seller or its representative and a building permit has been issued by the Local Government or a private certifier; or
- (d) except for a fireplace within the Dwelling, erect or install on the Land any incinerators or burners and the Buyer must not burn off any material or rubbish on, in or about the Land.

3 USE AND RESIDENCY CONDITIONS

3.1 After completion of the Dwelling on the Land, the Buyer must keep and maintain the Dwelling and all landscaping, trees, shrubs, lawns and gardens on the Land, as well as the lawn between the Land boundary and the road kerb in good order and condition acceptable to the Seller or its representative. Such order and condition will minimally require the adequate watering of all garden and lawn areas (within current Local Government guidelines), the frequent mowing of lawns and trimming of lawn edges and the regular maintenance of plants and trees.

- 3.2** The Buyer must not park or place either on the footpath or within the area of the required setback of the Dwelling from the street boundary of the Land, nor permit to be placed there, any trailer, caravan, boat or other vehicle or object which in the Seller's or its representative's opinion will cause nuisance or annoyance or detract from the amenity of the area. The Buyer must not park or allow to be parked within Hydeberry's private or public land or upon its streets either overnight or regularly on weekends for periods considered by the Seller or its representative to be excessive, any commercial vehicle other than a light utility vehicle.
- 3.3** The Buyer must not store or leave on the Land any materials or equipment (other than during the period of construction of the Dwelling and any Outbuildings, Improvements or Extensions) on the Land, nor carry out on the Land, repairs to or maintenance of any vehicle or equipment in such a way as, in the Seller's or its representative's opinion, to cause nuisance or annoyance or detract from the amenity of the area.
- 3.4** Refuse bins must be kept to the side of the Dwelling built on the Land and behind any fence or screen constructed between the Dwelling and a side boundary. Refuse bins must not be kept in front of the Dwelling or within the area of its setback from the street or otherwise unnecessarily in public view. Refuse bins are not to be placed on the street for a period greater than 48 hours every 7 days.
- 3.5** The Buyer must not without the Seller's or its representative's prior written consent display or permit to be displayed to the public the Dwelling erected on the Land (such as for a Display Home) except when such display is with the sole and immediate object of selling such Dwelling. Such period of public display is limited to 2 x 1 hour sessions weekly.
- 3.6** The Buyer must not without the express prior written consent of the Seller or its representative use the Dwelling, garage or outbuilding as a showroom, shop or Display Home. The Buyer consents to the Seller using (or permitting to be used) other dwellings at Hydeberry as either a showroom or a Display Home if the Seller wishes to do so.
- 4 BUILDING OPERATION REQUIREMENTS**
- 4.1** The Seller has produced Residential Design Guidelines (**Design Guidelines**) which set out architectural controls for houses and other improvements being built in Hydeberry.
- 4.2** The Buyer agrees to be bound by the Design Guidelines which form a part of these Housing Covenants and if there is any conflict between the Design Guidelines and these Housing Covenants then the Design Guidelines will prevail.
- 4.3** Only a single Dwelling for residential purposes may be erected on the Land, together with a lock-up garage, which must be suitably fitted with a vehicular access door and form an integral part of the design of the Dwelling.
- 4.4** The design, appearance and external colours and building materials of all Outbuildings must comply with these Housing Covenants and the Design Guidelines and be integrated with the design of the Dwelling.
- 4.5** The Buyer can erect or permit to remain upon the Land part of any Building Works or structure only if it fully complies with the requirements of the Local Government.
- 4.6** No Temporary Dwelling or sub-standard Dwelling can be brought onto the Land except for the purpose of building the Dwelling and for the purpose of building such other permanent structure on the Land as may be permitted by the Seller or its representative. No person can reside in any portion of the Dwelling prior to Practical Completion of the Dwelling and no person can reside in any workshop or garden shed at any time.
- 4.7** The Buyer is responsible for the establishment and maintenance in a proper manner all landscaping on their Land and must not remove any pre-existing trees without the consent of the Seller or its representative.
- 4.8** The Buyer must complete all driveways and landscaping of the Land including fencing on or before Practical Completion of the Dwelling.
- 4.9** Additions and Extensions to the Dwelling, Outbuildings and other structures on the Land, including new verandahs, pergolas, Outbuildings, sheds, swimming pools and garden structures are subject to the same

covenant requirements as the Dwelling and application for approval must be made to the Seller or its representative in the same manner as the original Dwelling building applications.

4.10 Street landscaping along each frontage of the Land must be protected by the Buyer during the construction of the Dwelling, Outbuildings, Improvements and Extensions. The Buyer agrees to reimburse the Seller, upon demand, for expenses incurred by the Seller on the Buyer's behalf in maintaining or repairing the landscaping along each frontage of the Land which have been damaged by the activities on the Land.

4.11 The Seller or its representative, in its absolute discretion, may approve or reject any application for approval of the Dwelling or grant approval subject to such conditions as it may reasonably require unless such application complies with the Housing Covenants

5 CONSTRUCTION AND PUBLIC SAFETY

5.1 The Land must be clean and safe at all times. This is the responsibility of the Buyer and the Buyer's builder.

5.2 Prior to construction of the Dwelling and Outbuildings, the Land must be cleared of all weeds, building debris and general waste.

5.3 During construction of any improvements, a suitable bin must be provided for adequate disposal of waste goods and materials.

5.4 Debris, bins and site facilities should be clear of all neighbouring properties, roads, footpaths, reserves and all other public places at all times.

6 MAINTENANCE OF THE LAND

6.1 The Buyer must not allow weeds or grass on the Land to exceed more than 150mm in height, nor bring onto or allow on the Land or adjoining lots or footpaths any rubbish, spoil or unsightly materials. In the case that the Land is tenanted, it is the Buyer's responsibility to ensure that tenants comply with this requirement.

6.2 The Buyer hereby authorises the Seller or its representative, and the Seller or its representative may elect, to maintain the Land (should the Buyer not do so to the standard required by these Housing Covenants as determined by the Seller or its representative) and grants access to the Land for this purpose and agrees that such entry and access will not constitute trespass. The Buyer agrees to reimburse the Seller or its representative, upon demand, for expenses incurred by the Seller or its representative in maintaining the Land on the Buyer's behalf.

7 ANIMALS

7.1 Animals may only be kept in accordance with Local Government by-laws and regulations.

8 SIGNS

8.1 The Buyer must not without the Seller's or its representative's prior written consent erect on the Land or adjoining footpath or fix to any building or fence on the Land or permit to be erected or fixed, any signs, hoardings or advertisements of any kind except a sign, of no more than 1.08 square metre (900mm x 1200mm) in area, of a contractor actively carrying out work on the Land (together with such other signs as workplace health and safety or planning regulations require) and a maximum of 1 sign no more than 1.08 square metre (900mm x 1200mm) in area advertising the Land for sale. The Buyer hereby authorises the Seller or its representative to enter upon the Land to remove any signs or advertising not complying with these provisions and agrees that such entry and access will not constitute trespass.

9 APPROVAL OF PLANS FOR BUILDING WORK, EXTENSIONS AND IMPROVEMENTS

9.1 If the Buyer's Extensions or Improvements are being constructed by the Seller or a related entity of the Seller then this Clause 9 does not apply.

9.2 Prior to the Buyer commencing any Building Work, Extension or Improvement or making any application for the approval of building plans (including plans for the Buyer's proposed Dwelling unless the Dwelling has

already been approved by the Seller at the time of the application) by the Local Government, the Buyer must first submit the plans for any Building Work, Extension or Improvement to the Seller or its representative showing, in addition to the requirements of Local Government:

- (a) the material and finish of all external walls and gables and of the roof and the pitch of the roof;
- (b) the position on the Land and the description of any retaining walls and fences;
- (c) any other information, matter or thing required by the Design Guidelines; and
- (d) obtain the Seller's or its representative's written approval.

9.3 The Seller or its representative, in its absolute discretion, may approve or reject any application for Building Works, an Extension or Improvement or grant approval subject to such conditions as it may reasonably require unless such application complies with the Housing Covenants.

9.4 The Buyer acknowledges that any approval granted by the Seller or its representative is in addition to, and not in place of, any approvals required to be given by Local Government and any competent authority. The Buyer agrees not to place any reliance on the Seller's or its representative's approval and acknowledges that the Seller's or its representative's approval will not constitute any representation as to the adequacy, suitability or fitness of any building plan, Building Work, Extension or Improvement.

9.5 The Buyer acknowledges and agrees that the Land may have been filled. The Buyer must make its own investigations to satisfy itself concerning any proposed Building Work as to the suitability of any footing, foundations or proposed construction given the nature of the Land and as to any requirements of the Local Government.

10 REQUIREMENTS OF THE EXTENSIONS AND IMPROVEMENTS

10.1 If the Buyer's Extensions or Improvements are being constructed by the Seller or a related entity then this Clause 10 does not apply.

10.2 The Buyer will carry out all Building Works in respect of any Extensions or Improvements strictly in accordance with the plans, details and conditions approved by the Seller and will obtain the Seller's or its representative's prior written approval of any variation in relation to the approved plans, details and conditions which the Buyer wishes to implement and which affects in any way the outside of the Dwelling or the development of the Land.

10.3 The Extensions or Improvements of the Dwelling or the Land must proceed continuously after commencement and without undue interruptions until the Extensions or Improvements are in all practical respects Practically Completed. Any subsequent construction of fences, walls, a driveway or pool and the like, whether undertaken by the Buyer and/or by others on the Buyer's behalf, must be carried on to completion in all respects without undue interruption or delay.

10.4 The aesthetic quality of the Extensions and Improvements in general and its appearance from the adjoining street in particular, in the Seller's or its representative's opinion, will be such as to contribute to or not detract from, the amenity of the area. The Buyer acknowledges that the following requirements in pursuit of this objective are reasonable and agrees to comply with them:

- (a) the aesthetic quality of the Extensions and Improvements will be determined by the Seller or its representative in terms of the style, colour and appearance of the Extensions and Improvements in its own right and in relation to that of the Dwelling and existing other dwellings in proximity to the Land and/or the appearance or style which the Seller intends future dwellings in proximity to the Land to have;
- (b) the Extensions and Improvements will not incorporate any secondhand or substandard materials;
- (c) no Temporary Dwelling, caravan, privy, tent or substandard Dwelling can be brought onto the Land prior to completion of the Extensions and Improvements and the Buyer must not live in any part of the Extension or Improvement prior to Practical Completion of the Extension or Improvement; and

- (d) the aesthetic quality of landscape works between the Dwelling and the street kerb, together with other areas of the Land within public view, will be determined by the Seller or its representative in terms of the style and appearance of the landscape works on the Land in its own right and in relation to that of existing other landscape works in proximity to the Land and/or the appearance or style which the Seller intends future landscape works in proximity to the Land to have.

10.5 All Building Works constructed upon the Land must be constructed by a registered and licensed builder.

11 FENCING

11.1 The Buyer is not permitted to replace any pre-existing fence on the Land that has been constructed by or on behalf of the Seller unless:

- (a) the materials are the same standard, design, and quality as the fence which was constructed at the time the Dwelling was constructed; and
- (b) the replacement fence is constructed in the same location as the original fence was constructed.

11.2 The Buyer is not permitted to construct any new fence on the Land without the prior written approval of the Seller or its representative.

11.3 Please refer to the Design Guidelines for design requirements for fencing on the Land.

11.4 Notwithstanding any provisions of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011(Qld)* to the contrary, the Seller will not be liable or be required, at any time, to join in or contribute to the cost of erecting or maintaining any fence erected or to be erected on the Land or on the boundaries of the Land or on any dividing line between the Land and any lots unsold or held by the Seller.

12 EARTHWORKS

Any earthworks to be constructed by the Buyer are to be strictly in accordance with the Design Guidelines.

13 SERVICES

13.1 The Buyer and Seller acknowledge and agree that if a water supply pipeline or sewerage pipeline, an underground electricity supply cable, an underground telephone service cable, a stormwater or other drainage pipeline or any other similar pipelines or services traverse the Land (whether on, above or below the surface of the Land), then the Buyer accepts title to the Land subject to any rights of the local authority, government department or person or company or in respect of such pipelines and cables and will not make any requisition or Objection in respect of the same.

14 DISCLAIMER

14.1 The Seller at its discretion has the authority to approve on its merits any innovative or diverse designs that do not meet the requirements of these Housing Covenants. The Buyer acknowledges that the Seller or its representative has the right to vary, exclude or elect not to enforce any of the Housing Covenants on owners of other land in Hydeberry. The Buyer will not Object against the Seller and its representatives and specifically absolves the Seller and its representatives from any liability of any nature for any action taken in varying, excluding and electing not to enforce any Housing Covenants on other owners of other land in Hydeberry.

15 NO MERGER

15.1 The Buyer and the Seller agree that all of the covenants and agreements in the Housing Covenants remain in full force and effect against the Buyer and the Buyer's successors, administrators and assigns in favour of the Seller and its successors, administrators and assigns notwithstanding the completion of the sale and purchase of the Land and the registration of a transfer of the Land in favour of the Buyer.

16 SALE OR LEASE BY THE BUYER

- 16.1** The Buyer must not sell, transfer or otherwise dispose of the Land without first delivering to the Seller a Deed Poll executed by the future buyer, transferee or disponent in favour of the Seller containing covenants in the same terms (mutatis mutandis) as set forth in the Housing Covenants and including an obligation for each further purchaser, transferee or disponent to obtain a further Deed Poll from any subsequent purchaser, transferee or disponent.
- 16.2** The Buyer must not lease, licence or part with possession of the Land without first delivering to the tenant, licensee or occupier a copy of the Housing Covenants.
- 16.3** The Buyer hereby indemnifies the Seller and agrees to keep the Seller indemnified against all loss and damage incurred by the Seller as a direct or indirect result of the Buyer's failure to comply with the obligation contained in Clauses 16.1 and 16.2.

17 ENTRY ONTO THE LAND BY THE SELLER

- 17.1** The Buyer and Seller agree that if and whenever the Buyer or any successors in title make any default under these Housing Covenants, the Seller or its representative, without prejudice to its other rights, remedies and powers, will be at liberty to enter upon the Land to perform such work as may be necessary to comply with these Housing Covenants and the Seller or its representative will be entitled to recover the cost of the work from the Buyer or any successors in title.
- 17.2** The Buyer agrees that access or entry onto the Land by the Seller or its representative pursuant to Clause 17.1 is irrevocable and does not constitute trespass.

18 SELLER'S DISCRETION

- 18.1** The Buyer may apply to the Seller or its representative for consent to complete works on the Land and other buyers of lots in Hydeberry may apply to the Seller or its representative for consent to complete works on those lots which do not comply with these Housing Covenants. The Seller or its representative may grant or refuse such applications in its absolute discretion.
- 18.2** The Seller or its representative reserves the right to vary the Housing Covenants for future lots at Hydeberry.

19 CONSTRUCTION

19.1 The Buyer must:

- (a) commence construction of the Dwelling on the Land (in accordance with these Housing Covenants) by the date 12 months after settlement of the Contract;
- (b) not have the building of the Dwelling left at any time without substantial work being carried out for more than one month; and
- (c) complete construction of the Dwelling, fencing, driveway and landscaping on the Land by the date 12 months after the date the Buyer commenced construction of the Dwelling,

as determined by the Seller acting reasonably.

20 BOND

- 20.1** The Buyer must pay the Bond to the Deposit Holder prior to the Seller issuing approval to the Buyer in accordance with these Housing Covenants.
- 20.2** The Bond will be held by the Deposit Holder as security for:
- (a) the Buyer strictly complying with the terms of these Housing Covenants and the terms of the Seller's approval pursuant to these Housing Covenants; and

- (b) damage to any land or improvements within Hydeberry including but not limited to damage to footpaths, roads, street trees, turfing and gutters which in the Seller's opinion has been caused or contributed to by the Buyer and/or its employees, agents, invitees, contractors and builders.

20.3 The Seller is free to use the Bond to effect, carry out or rectify:

- (a) any works required to be done by the Buyer pursuant to these Housing Covenants or the Seller's approval pursuant to these Housing Covenants but which have not been done by the Buyer; and
- (b) any and all damage to any land or improvements within Hydeberry including but not limited to damage to footpaths, roads, street trees, turfing, and gutters which in the Seller's opinion has been caused or contributed to by the Buyer and/or its employees, agents, invitees, contractors and builders.

20.4 The Buyer and the Seller irrevocably authorise and direct the Deposit Holder to release to the Seller the Bond for any of the purposes set out in Clause 20.3 on receiving a request from the Seller.

20.5 On Practical Completion of the Dwelling, landscaping, fencing and driveway (in accordance with these Housing Covenants and the Seller's approval pursuant to these Housing Covenants) to the Seller's satisfaction, the Deposit Holder will return any unused portion of the Bond to the Buyer on receiving a request from the Seller.

21 COMPLIANCE WITH HOUSING COVENANTS

21.1 Compliance with Housing Covenants Generally

- (a) The Buyer:
 - (i) acknowledges that the Seller has a significant investment in Hydeberry, and has an interest in maintaining the value and desirability of lots within the Estate;
 - (ii) acknowledges that a failure by the Buyer to strictly comply with the Housing Covenants will diminish the value of the Seller's significant investment in Hydeberry;
 - (iii) acknowledges that a failure by the Buyer to strictly comply with the Housing Covenants will diminish the value and desirability of:
 - (A) unsold lots in Hydeberry in the hands of the Seller; and
 - (B) lots sold by the Seller to other owners within Hydeberry.
 - (iv) agrees that in the event that the Buyer does not strictly comply with the Housing Covenants, the Seller will have legally enforceable rights against the Buyer, including the right to seek orders from the Courts compelling compliance by the Buyer, the right to enter onto the Land to undertake works to remedy a non-compliance and/or the right to seek damages against the Buyer and the right to call on and use the Bond; and
 - (v) hereby irrevocably grants to the Seller or the Seller's representative or agent, a licence to enter onto the Land to undertake work reasonably necessary to rectify any non compliance with the Housing Covenants, such right not to be exercised until after notice has been given by the Seller to the Buyer to rectify the breach and that breach has not been rectified within the period provided for in the notice.
- (b) The Buyer warrants and represents to the Seller that the Buyer will comply strictly with the terms of the Housing Covenants and that it has the capacity to do so and the Buyer acknowledges that the Seller has relied on and been induced by those warranties and representations, to enter into the Contract with the Buyer to sell the Land.

21.2 Indemnities

- (a) In further consideration of the Seller entering into the Contract with the Buyer to sell the Land, the Buyer hereby indemnifies the Seller in relation to all Claims and liabilities whatsoever, which are made or may be made by any other person against the Seller, its agents, employees, directors or contractors, arising directly or indirectly out of or in connection with any failure by the Buyer to strictly comply with the terms of the Housing Covenants, including all Claims for damages and costs (on a full indemnity basis); and
- (b) indemnifies the Seller in connection with all legal costs and outlays incurred by the Seller in enforcing or attempting to enforce the Housing Covenants, on a full indemnity basis.

21.3 Restrictions to Cease

The restrictions specified in the above clauses (inclusive) will cease to burden the Land with effect from 31 December 2022.

21.4 Joint and Several

The Buyer (if more than one person) agrees that they are jointly and severally liable in relation to the obligations pursuant to these Housing Covenants.

22 DEFINITIONS

Bond	means the amount of \$1,000.00.
Building Works	means any works carried out on the Land in the nature of the construction, alteration, renovation or repair of the Dwelling or other building, fence, retaining wall, external sign or hoarding, driveway, external floodlights or spotlights or external fittings.
Buyer	means the buyer as detailed in the Reference Schedule of the Contract and any subsequent buyer of the Land.
Contract	means the contract of sale by which the Buyer became the owner of the Land whether the Seller or a third party was the seller of the Land to the Buyer.
Claim	means any cost, claim, demand, obligation, remedy, damage, loss, action, proceeding, claim for compensation, requisition or objection, whichever is applicable.
Development Application	means an application for Development Approval.
Deposit Holder	means HWL Ebsworth Lawyers Law Practice Trust Account.
Development Approval(s)	means a development approval made by or on behalf of the Seller or third party pursuant to the <i>Planning Act 2016 (Qld)</i> and/or the <i>Sustainable Planning Act 2009 (Qld)</i> as applicable in relation to the Land and/or Hydeberry.
Display Home	means a dwelling used as a 'Display Home' as that term is defined in the <i>Domestic Building Contracts Act 2000 (Qld)</i> .
Dwelling	means the residential detached Dwelling constructed or to be constructed on the Land.
Extension	means addition, renovation, or alteration to an existing Dwelling.
Housing Covenants	means these Housing Covenants including the Residential Design Guidelines annexed to these Housing Covenants.

Hydeberry	means the estate currently known as “Hydeberry” of which the Land forms part which is being progressively developed by the Seller and which name may change from time to time in the Seller’s absolute discretion.
Improvements	means any of the following but is not limited to: new Dwelling, transmitting and receiving devices, security systems, air conditioning units, fences, retaining walls, letterboxes, landscaping within public view, garden sheds, clothes lines, external floodlights or spotlights, driveway, external fittings, pergolas and hot water systems.
Land	has the same meaning as detailed in the Reference Schedule of the Contract which is owned or under contract by the Buyer and is located in Hydeberry.
Local Government	means the Brisbane City Council.
Object or Objections	means to object generally and includes: <ul style="list-style-type: none">(a) object to a variation, change or substitution;(b) object to title to the Land;(c) avoid or attempt to avoid the Housing Covenants or Contract;(d) require the Seller to carry out any works to the Land;(e) withhold a consent;(f) make any claim, demand, appeal or suit of any nature; or(g) seek an injunction.
Outbuilding	means, for example, garage, verandah, pergola, shed whether attached or detached from the Dwelling.
Practical Completion	means when the relevant Building Works, Dwelling, Improvement, Extension or Outbuilding have reached practical completion and they have been approved by a building certifier (if applicable) that they are fit for use and occupation.
Residential Design Guidelines (Design Guidelines)	means the attached Residential Design Guidelines which form part of the Housing Covenants.
Seller	means Mirvac Queensland Pty Limited ACN 060 411 207 and its executors, administrators, successors, substitutes and permitted assigns.
Temporary Dwelling	means, for example, caravan, tent or any Dwelling temporarily erected to assist in any Building Works.

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

Witness

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

Witness

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

Witness

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

SIGNED on behalf of the **Seller** by its duly authorised)
signatories:)

) #

Seller

Witness

Seller

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RESIDENTIAL DESIGN GUIDELINES

(follows this page)

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Annexure D Deed Poll

DEED POLL - HYDEBERRY

TO: **Mirvac Queensland Pty Limited ACN 060 411 207**

(“Developer”)

FROM:

.....
[insert New Owner’s name]

.....
[insert New Owner’s name]

.....
[insert New Owner’s address]

.....
[insert New Owner’s address]

(“New Owner”)

LAND: "Hydeberry", Rochedale Qld 4123

BACKGROUND

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

OPERATIVE PART

1. The New Owner represents to and warrants in favour of the Developer as follows:
 - (a) the New Owner agrees to abide by the terms of the Housing Covenants **attached (Housing Covenants)** as though the New Owner was the “Buyer” and the Developer was the “Seller” referred to in the Housing Covenants; and
 - (b) the New Owner agrees not to sell, transfer, dispose of, lease or in any other way part with possession of the Land without first obtaining a covenant from any disponent in favour of the Developer on the same terms of this Deed Poll.
2. The New Owner acknowledges that it is bound by the terms of the Housing Covenants and is responsible for all costs incurred by the Developer in the enforcement or attempted enforcement of the Housing Covenants and that it will be subject to legal action for rectification costs, damages, legal costs (on a solicitor and own client basis) for any breach of the Housing Covenants.
3. The New Owner acknowledges that the Developer, in its total discretion, has and reserves the right to vary, exclude or elect not to enforce any of the Housing Covenants and/or interpret the Housing Covenants and the intent of the Housing Covenants for any land in the Estate.
4. The New Owner acknowledges that:
 - (a) the Estate may be developed progressively by the Developer; and
 - (b) this involves or will involve (amongst other things) the progressive carrying out of various works and the making of town planning and building applications of various types to Authorities (**Applications**).
5. The New Owner must not:
 - (a) make or maintain any Objection either alone or jointly with others against or do anything which may adversely affect any of the Applications;
 - (b) Object in relation to any dust, noise or traffic interference which results from the carrying out of and works within the Estate;
 - (c) do or omit anything which would prevent the Developer from completing the Estate or selling allotments in the Estate; and

- (d) Object if the Developer does not complete construction of any other land included in the Estate or does not continue to develop any of the land owned by the Developer.
6. To facilitate the progressive development of the Estate, the New Owner irrevocably grants the Developer and any nominees of the Developer including any Authority and NBN Co and any supplies for NBN Co (**Nominee**) (including any employee, contractor, consultant or agent of the Developer) a licence to enter and remain on the Land as is reasonably required by the Developer or its Nominee to undertake works of any kind necessary or incidental to install or establish utility infrastructure and utility services and connections, thereto, including the following works:
- (a) to complete and/or rectify any works required by the approvals granted to the Developer for the development for the Estate (of which the Land forms part) including but not limited to civil works and the connection of services to the Land;
 - (b) the installation of pit and pipe works and network infrastructure;
 - (c) excavation and general earthworks;
 - (d) the construction of common areas, including roads;
 - (e) the construction of such improvements and facilities as may be considered necessary by the Developer to establish utility services and connections thereto; and
 - (f) the construction of services infrastructure whether public or private including without limitation, connections for sewerage, gas, electricity, communications, water or any other lawful service available to the public,
- all of which are collectively called the **Utility Infrastructure Works**.
7. The licence fee is \$1.00 payable by the Developer to the New Owner if demanded by the New Owner.
8. The Developer or its Nominee may bring onto the Estate (including the Land) any machinery, tools, equipment, vehicles and workmen to facilitate the carrying out of the Utility Infrastructure Works, provided that the Developer does not unreasonably interfere with the New Owner's enjoyment of the Land.
9. The covenants and acknowledgements in this Deed Poll given by the New Owner to any Nominee are made and given for the benefit of the Nominee pursuant to section 55 of the *Property Law Act 1974* in consideration of the Developer consenting to the sale of the Land to the New Owner.
10. The New Owner acknowledges that it has no right to Object if the Developer or a Nominee exercise their rights or have a right to exercise their rights pursuant to this Deed Poll.
11. The Developer must:
- (a) so far as reasonably possible cause minimal disturbance to any occupant of the Land; and
 - (b) repair any damage caused to the Land,
- as a result of the Developer or its Nominee (excluding NBN Co whom the Developer has no control over) exercising its rights under this Deed Poll.
12. The New Owner must not Object to the continuation of civil or construction works within the Estate which may disrupt or inconvenience the New Owner or an occupier of dwelling on the Land.
13. The New Owner must not sell, transfer, assign or otherwise dispose of the Land without first delivering to the Developer a deed poll executed by the future buyer, transferee, assignee or disponent in favour of the Developer containing covenants in the same terms (*mutatis mutandis*) as this Deed Poll including an obligation for each further buyer, transferee, assignee or disponent to obtain a further deed poll from any subsequent buyer, transferee, assignee or disponent.
14. The New Owner indemnifies the Developer for any costs or damages the Developer suffers or may suffer as a result of any future buyer, transferee, assignee or disponent not being bound to the terms of this Deed Poll due a breach of the New Owner of this Deed Poll.
15. For the purposes of this Deed Poll:
- (a) **Authority** means any body, government, person or otherwise having or exercising control over the approval of, carrying out of, use or operation of the Land or the Estate or any services to be provided to the Land or the Estate, including, but not limited to, the Local Government and the department of Economic Development Queensland.
 - (b) **Object** or **Objection** means to object generally and includes:
 - (i) object to a variation, change or substitution;
 - (ii) claim compensation;

- (iii) require the Developer to carry out any works to the Land;
 - (iv) withhold a consent;
 - (v) make any claim, demand, appeal or suit of any nature; or
 - (vi) seek an injunction.
16. Queensland Law applies to this Deed Poll. The New Owner submits to the jurisdiction of the courts of Queensland.
17. This Deed Poll takes effect from the date the New Owner has effected settlement of the contract to buy the Land.
18. The New Owner must give to the Developer a copy of this signed and witnessed Deed Poll.

DATED THIS _____ 20____.

SIGNED AS A DEED POLL

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

.....
New Owner's Signature

.....
Witness

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

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

.....
New Owner's Signature

.....
Witness

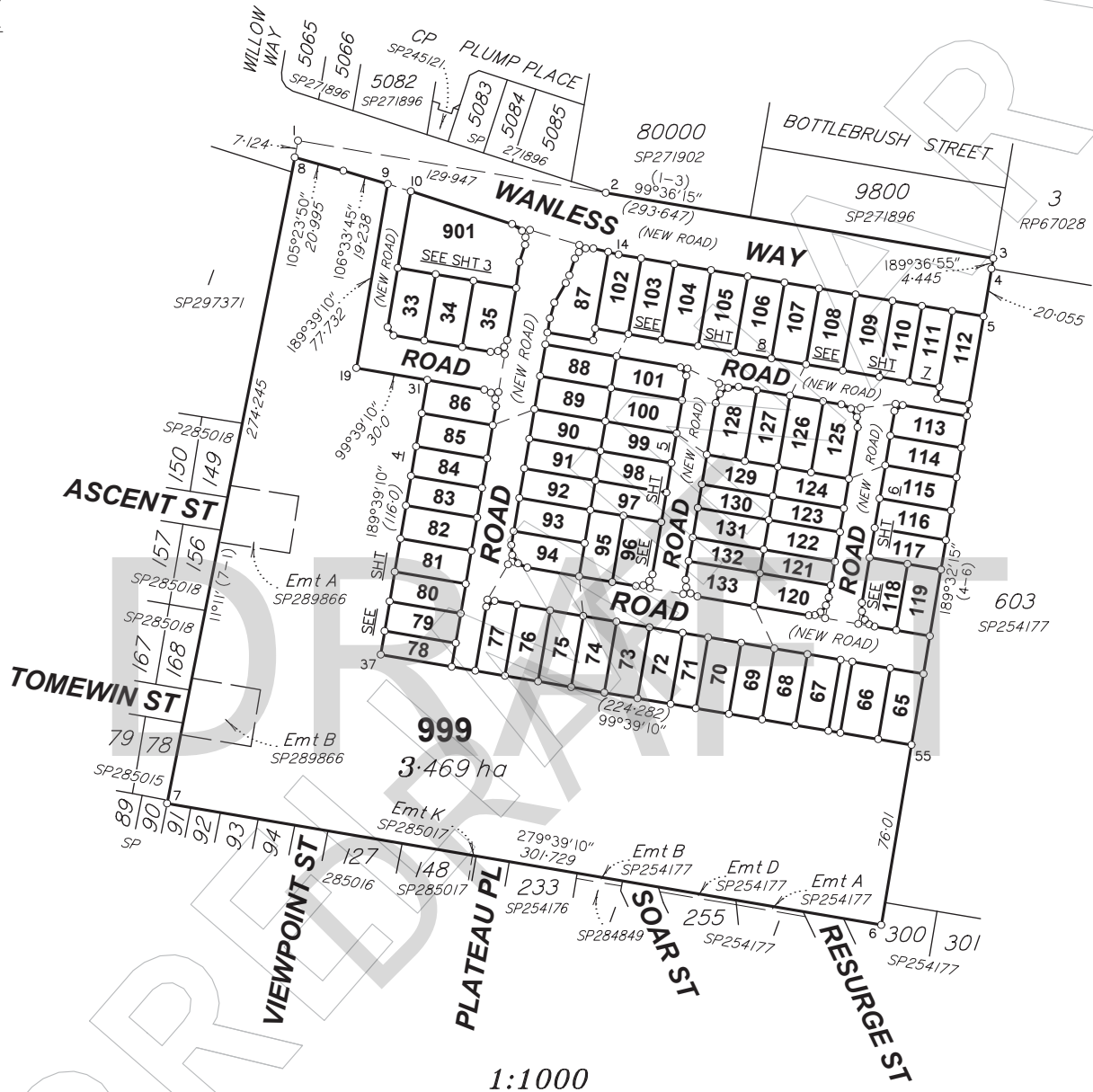
**THE NEW OWNER'S SIGNATURE MUST BE
WITNESSED**

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Annexure E Survey Plan

(follows this page)

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1:1000

Peg placed at all new corners unless otherwise stated.

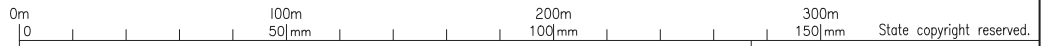
Area of New Road
1.806 ha

- See Sheet 3 for Lots 33-35, 86-89, 102 & 901.
- See Sheet 4 for Lots 75-85 & 90-94.
- See Sheet 5 for Lots 69-74, 95-99 & 129-133.
- See Sheet 6 for Lots 65-68, 115-119 & 120-124.
- See Sheet 7 for Lots 108-114, 125 & 126.
- See Sheet 8 for Lots 100, 101, 103-107, 127 & 128.

PRELIMINARY STATUS

ALL DIMENSIONS AND AREAS ON THIS PLAN ARE SUBJECT TO SURVEY AND REQUIREMENTS FOR LODGEMENT OF SURVEY PLANS IN THE DEPARTMENT OF NATURAL RESOURCES AND MINES.

Level 1 - CDOPE
10 Little Gribb St, Milton
Queensland 4064
p. (07) 3842 1000
f. (07) 3842 1001
e. info@landpartners.com.au
w. www.landpartners.com.au



Plan of Lots 33-35, 65-133, 901 & 999

Cancelling Lot 2 on SP297371

LOCAL GOVERNMENT: BRISBANE C.C. LOCALITY: ROCHEDALE

Meridian (MGA) Zone 56, Vide SP297371

Survey Records: No

Scale: **1:2000**

Format: **STANDARD**

SP303580

BRSS7094.001-001A 709401A0

**WARNING : Folded or Mutilated Plans will not be accepted.
Plans may be rolled.
Information may not be placed in the outer margins.**

(Dealing No.)

5. Lodged by

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

1/We MIRVAC QUEENSLAND PTY LIMITED A.C.N. 060 411 207

(Names in full)

* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

* as Lessees of this land agree to this plan.

Signature of *Registered Owners *Lessees

6. Existing		Created		
Title Reference	Description	New Lots	Road	Secondary Interests
51115879	Lot 2 on SP297371	33-35, 65-133, 901 & 999	New Rd	-

ENCUMBRANCE EASEMENT ALLOCATIONS

Easement	Lots to be Encumbered
718547381 (Emt A on SP289866)	999
718547381 (Emt B on SP289866)	999

* Rule out whichever is inapplicable

2. Planning Body Approval.

*
hereby approves this plan in accordance with the:
%

Dated this day of

* Insert the name of the Planning Body.
• Insert designation of signatory or delegation

% Insert applicable approving legislation.

3. Plans with Community Management Statement :

CMS Number :
Name :

4. References :

Dept File :
Local Govt :
Surveyor : BRSS7094.001

33-35, 65-133, 901 & 999	Por.338
Lots	Orig

7. Orig Grant Allocation :

8. Passed & Endorsed :

By: LandPartners Pty Ltd
Date :
Signed :
Designation : Liaison Officer

9. Building Format Plans only.

I certify that :
* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road;
* Part of the building shown on this plan encroaches onto adjoining *lots and road
Cadastral Surveyor/Director* Date
*delete words not required

10. Lodgement Fees :

Survey Deposit	\$
Lodgement	\$
..... New Titles	\$
Photocopy	\$
Postage	\$
TOTAL	\$

II. Insert Plan Number **SP303580**

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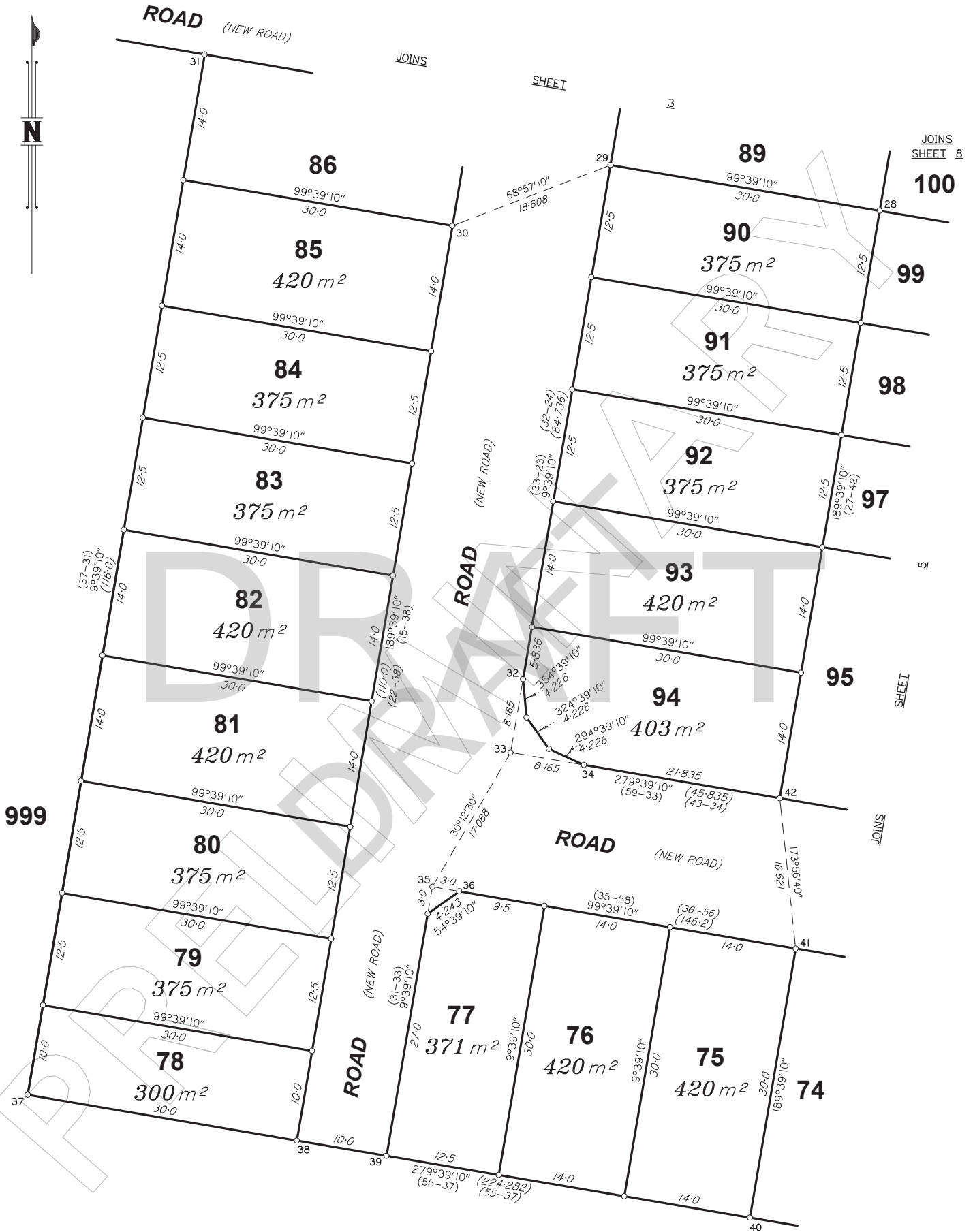
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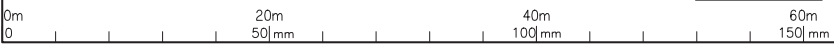
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REFERENCE MARKS

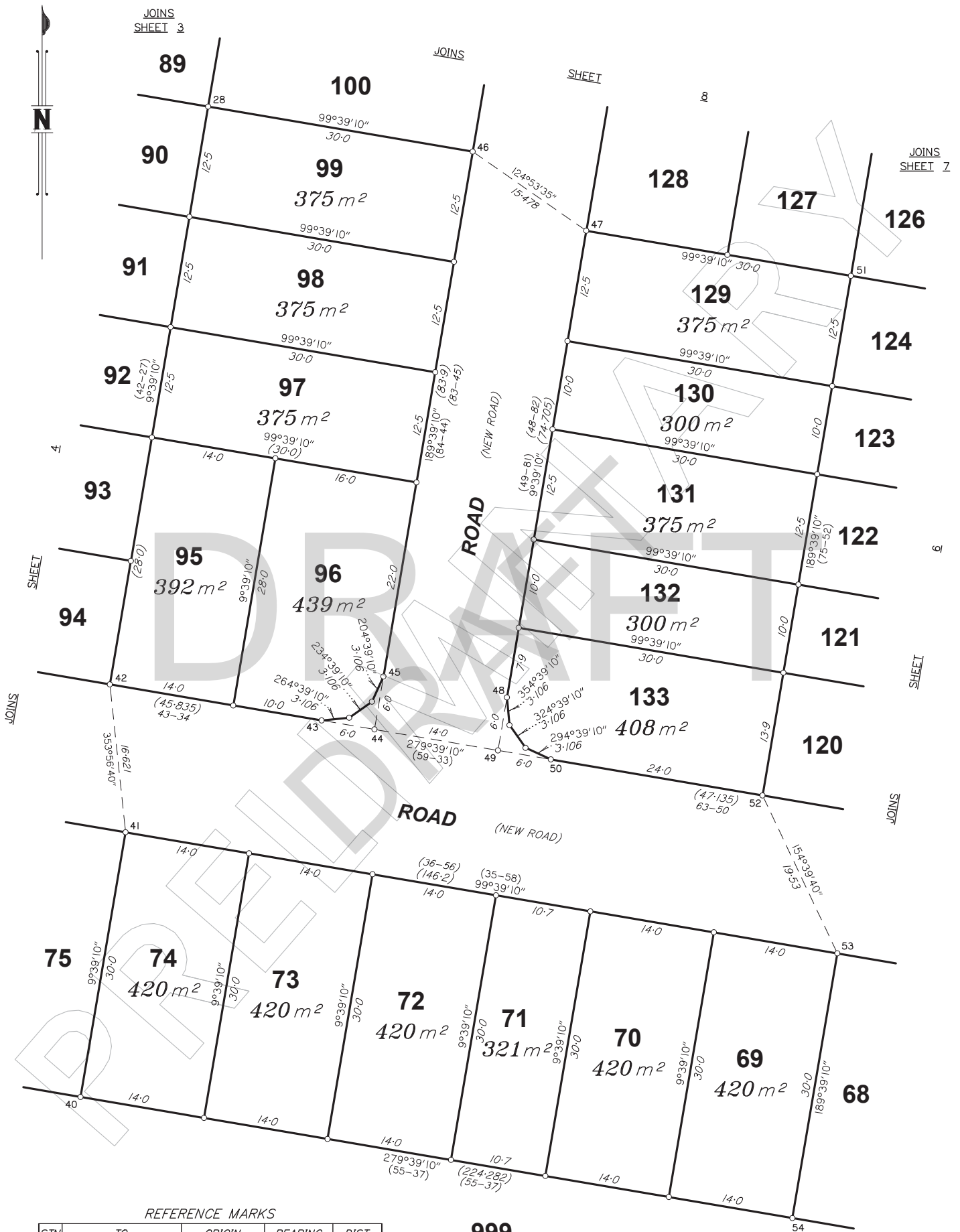
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SCALE 1: 400



State copyright reserved

Insert Plan Number **SP303580**



REFERENCE MARKS

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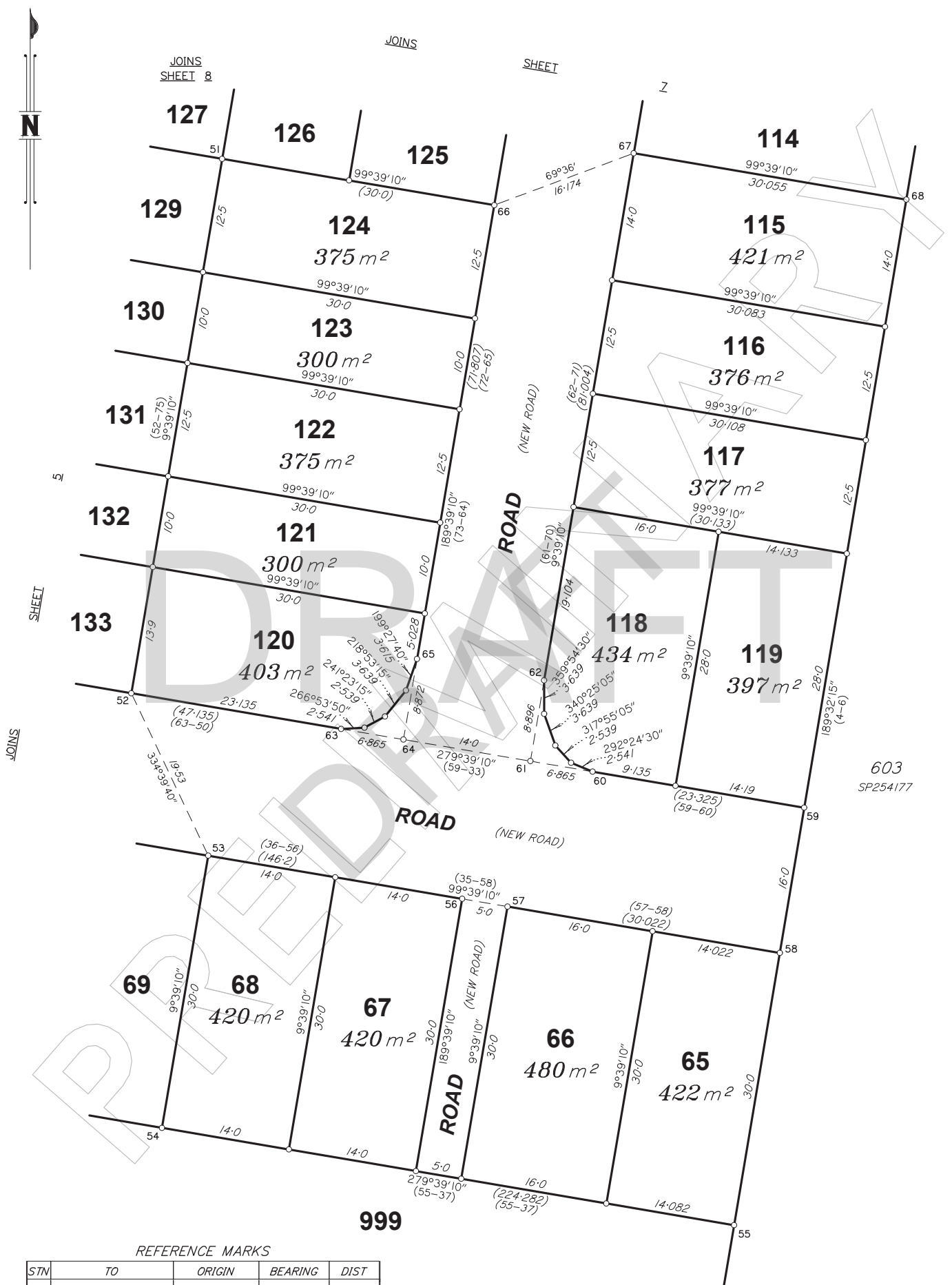
999

SCALE 1:400



State copyright reserved

Insert Plan Number **SP303580**



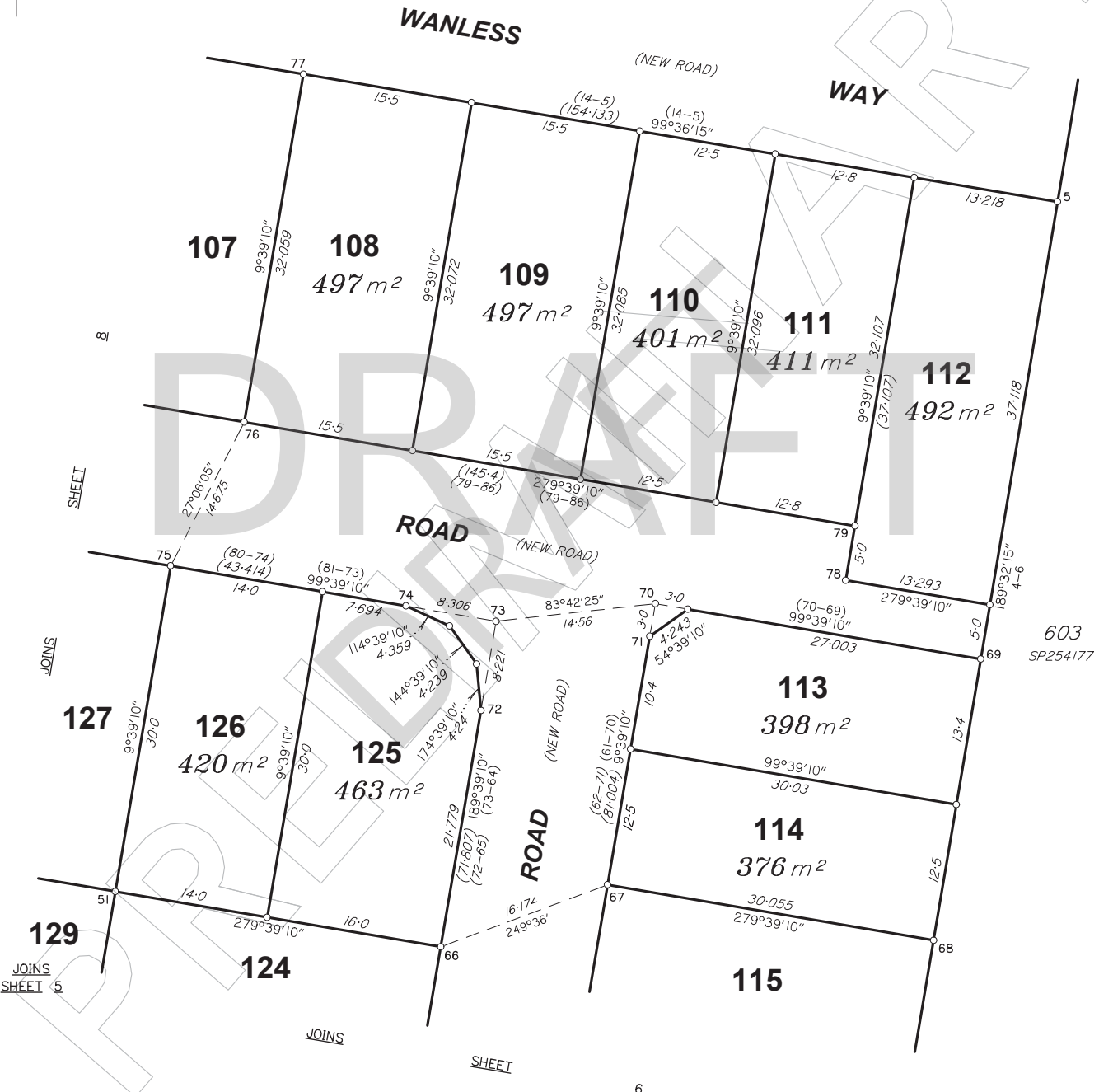
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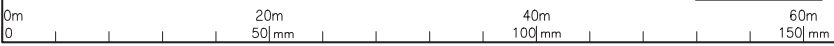
State copyright reserved
Insert Plan Number **SP303580**



REFERENCE MARKS

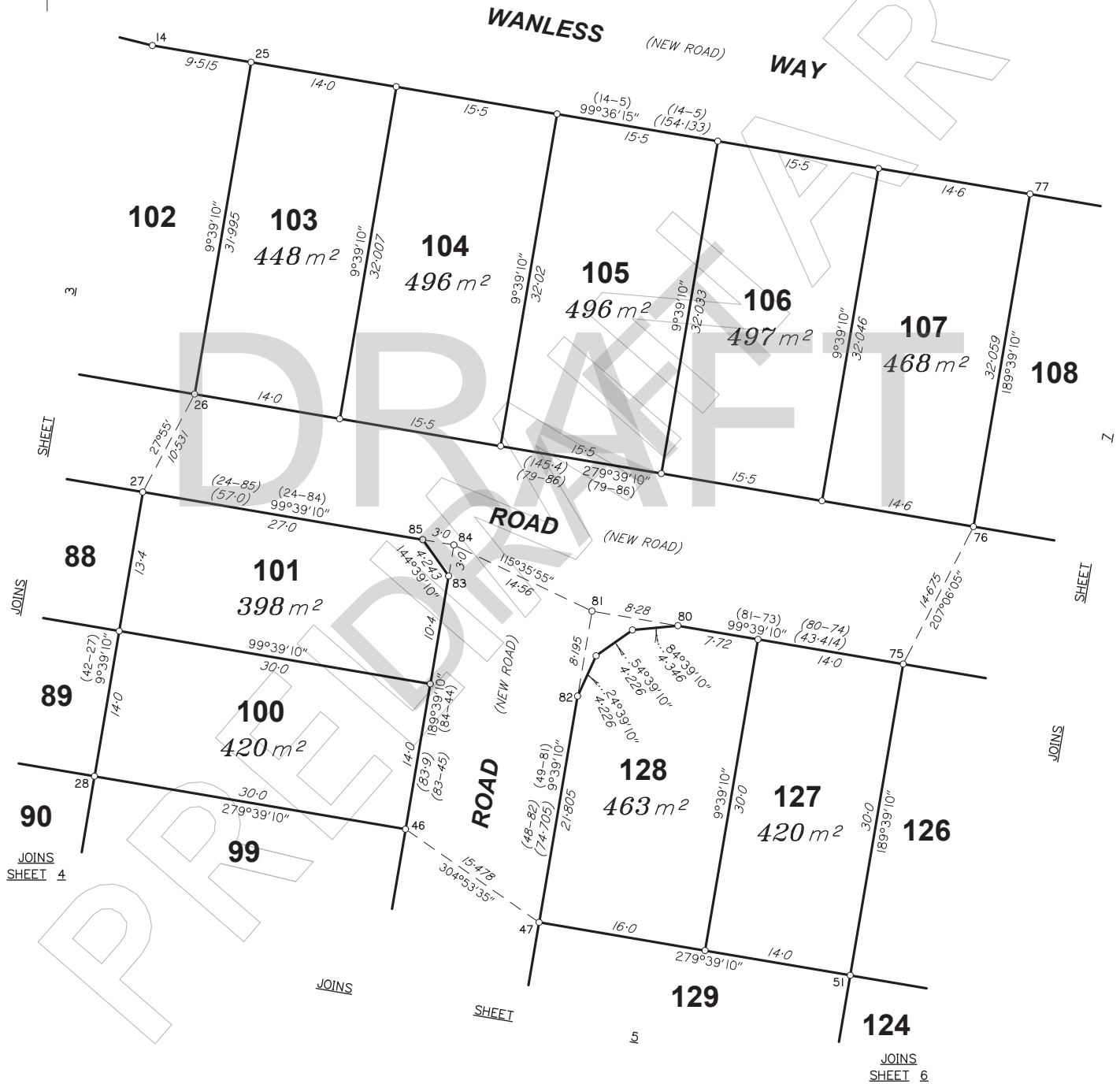
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SCALE 1: 400



State copyright reserved

Insert Plan Number **SP303580**



REFERENCE MARKS

STN	TO	ORIGIN	BEARING	DIST

SCALE 1: 400



State copyright reserved

Insert Plan Number **SP303580**

Annexure F Guarantee and Indemnity

Guarantor 1 Name # _____
Guarantor 1 Address # _____
Guarantor 2 Name # _____
Guarantor 2 Address # _____
Guarantor 3 Name # _____
Guarantor 3 Address # _____

(Guarantor)

Contract for the sale and purchase of the Property to be made between the Seller and the Buyer named in the Reference Schedule (in the contract)

(Contract)

It is agreed:

1. Agreement

1.1 The Guarantor:

- (a) has requested that the Seller enter into the Contract;
- (b) enters into this Guarantee and Indemnity in consideration for the Seller agreeing to:
 - (i) enter into the Contract at the request of the Guarantor; and
 - (ii) pay the Guarantor \$1.00 within 10 Business Days after written demand by the Guarantor to the Seller; and
- (c) acknowledges the receipt of valuable consideration from the Seller for the Guarantor incurring obligations under this Guarantee and Indemnity.

1.2 The Seller agrees to enter into the Contract at the request of the Guarantor.

2. Guarantee

2.1 The Guarantor:

- (a) unconditionally and irrevocably guarantees to the Seller on demand the due and punctual performance by the Buyer of all of its obligations under the Contract;
- (b) as a separate undertaking, agrees to unconditionally and irrevocably indemnify the Seller against all liability, damages, costs, expenses and losses of any kind and howsoever arising (including penalties, fines, interest, duties, fees, taxes or legal fees on a full indemnity basis) which the Seller may suffer as a result of or arising directly or indirectly out of:
 - (i) any default, breach or non-compliance by the Buyer of the Contract;
 - (ii) a breach by the Buyer of a promise, representation, warranty or the like by the Buyer in the Contract or otherwise, including any promise, representation, warranty or the like which was incorrect or misleading when made;
 - (iii) any failure by the Buyer to strictly observe a term or obligation of the Contract;

- (iv) settlement of the Contract not occurring or not taking effect;
- (v) the Buyer having no obligations, being relieved of any obligations or any obligations of the Buyer becoming unenforceable under the Contract; or
- (vi) making, enforcing and doing anything in connection with this Guarantee and Indemnity.

2.2 The Guarantor agrees that the Guarantor's liability and obligations under this Guarantee and Indemnity are not affected by any:

- (a) termination of the Contract by the Seller as a result of any default or breach by the Buyer;
- (b) insolvency, bankruptcy, death, incompetency or winding up of the Buyer or of any Guarantor;
- (c) assignment of the Contract by the Buyer or the Seller;
- (d) grant of time or other concession to the Buyer by the Seller or to the Seller by the Buyer;
- (e) compromise, waiver, variation or novation of any of the rights of the Seller against the Buyer under the Contract;
- (f) delay by the Seller in exercising its rights or if the Seller does not sue the Buyer;
- (g) acquiescence, acts, omissions or mistakes on the part of the Seller;
- (h) purported rights of the Seller against the Buyer under the Contract being invalid, void or unenforceable for any reason including by operation of law or statute;
- (i) future variations or alterations to the Contract agreed between the Buyer and the Seller, regardless of whether the Guarantor has first consented to the variation or alteration and regardless of any prejudice to the Guarantor arising from that variation or alteration;
- (j) other person who was named, intended or required to enter into this Guarantee and Indemnity has not done so or has not done so effectively;
- (k) waiver or other indulgence or the discharge or release of a Buyer or any other person from any obligation;
- (l) guarantee and indemnity by any other person who has entered into this Guarantee and Indemnity not being, for any reason whatsoever, enforceable; or
- (m) other acts, omission, thing or matter whatsoever which, but for this provision, might in any way operate to release or otherwise exonerate or discharge the Guarantor from any of its obligations as surety.

2.3 This Guarantee and Indemnity:

- (a) extends to cover the Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and
- (b) is a continuing guarantee and indemnity and, despite settlement, remains in full force and effect for as long as the Buyer has any liability or obligation to the Seller under the Contract and until all of those liabilities or obligations have been fully discharged.

2.4 The Guarantor represents to the Seller that before the Guarantor entered into this Guarantee and Indemnity the Guarantor has read this Guarantee and Indemnity, the Contract and any other associated documents and has been given the opportunity to take and has taken whatever legal and other advice the Guarantor considered necessary.

- 2.5 The Seller may assign its rights under this Guarantee and Indemnity without affecting or discharging the Guarantor’s liability as surety in any way.
- 2.6 The Seller does not have to sue the Buyer or enforce any rights against any person before claiming under this Guarantee and Indemnity.
- 2.7 Money paid to the Seller by the Guarantor must be applied first against payment of costs, charges and expenses under clause 2.1(b) then against other obligations under this Guarantee and Indemnity.
- 2.8 This Guarantee and Indemnity binds each Guarantor individually and all of them jointly.
- 2.9 This Guarantee and Indemnity is a separate, collateral instrument to the Contract.
- 2.10 If there is any ambiguity in this Guarantee and Indemnity, it is to be interpreted in favour of the Seller. Any void, voidable or illegal term of this Guarantee and Indemnity is to be read down or severed leaving the balance operable.
- 2.11 Clauses 10.4 and 10.9 of the Terms of Contract (as amended) apply to this Guarantee and Indemnity as if they were stated in it (but as if references to "Contract" were to "Guarantee and Indemnity").
- 2.12 The Guarantor acknowledges and agrees that this Guarantee and Indemnity was signed by the Guarantor before the Seller signed the Contract.
- 2.13 This Guarantee and Indemnity may be executed and exchanged in any manner permitted under the Contract for the execution and exchange of that document (including electronically).
- 2.14 Any terms defined in the Contract have the same meaning when used in this Guarantee and Indemnity. The use of the word “including” (and any similar expression) is not used as a word of limitation. In any combination or list of options, the use of the word “or” is not used as a word of limitation.

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

SIGNED by **Guarantor 1** named above:) #
)
) **SIGNATURE – GUARANTOR 1**

.....
WITNESS

SIGNED by **Guarantor 2** named above:) #
)
) **SIGNATURE – GUARANTOR 2**

.....
WITNESS

SIGNED by **Guarantor 3** named above:) #
)
) **SIGNATURE – GUARANTOR 3**

.....
WITNESS

SIGNED on behalf of **Mirvac Queensland Pty Limited**)
ACN 060 411 207 by its duly authorised signatory:) #
)
SIGNATURE – SELLER

..... #

SIGNATURE – SELLER

Annexure G Easement Schedule

Lot No	Location	Purpose	Type – Private or In Gross

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Annexure H Services and Other Features Plans

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Annexure I Additional Special Condition

Variations to Contract

The terms of this contract are varied in accordance with the table below as follows:

Buyer 1 Sign

Buyer 3 Sign

Buyer 2 Sign

Seller Sign

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