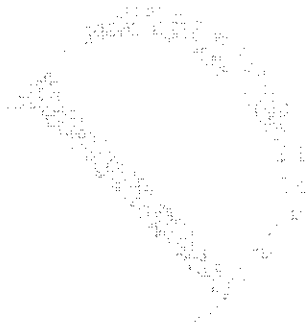


THIRD SCHEDULE

CONTRACT OF SALE



SWANSTON & ASSOCIATES

Lawyers

Suite 6, "Boulevard Centre"

68 Jessica Boulevard

MINYAMA Q 4575

(PO Box 256, Buddina, Q. 4575)

Ph: (07) 5444 6111

Fax: (07) 5444 1546

N. BUYER'S SOLICITORS:

Ph: Fax:
Email:

O. STAKEHOLDER: Norm Martin Real Estate Pty Ltd Licence No. 1706395 ABN 38 063 872 060

P. DATE FOR COMPLETION: SEE CLAUSE 5

Q. ADDITIONAL CLAUSES: See Special Conditions set out in Clause 36 hereof

R. ENCUMBRANCES: Those encumbrances created or implied by operation of the Act, the encumbrances (if any) disclosed herein, the encumbrances (if any) notified or to be notified on the subdivision plan any easements created or to be created by the Seller prior to completion and any easements contemplated and/or anticipated by the provisions contained herein.

S. FINANCE: Lender or Class of Lender:
(Clause 34)

Approval Date:

Amount of Loan:

Note: Unless "Approval Date" is completed this contract is not subject to finance and clause ... does not apply.

T. FIRB APPROVAL: Yes/No (delete which is not applicable)
(Clause 29)

Approval Date:

Note: Unless "Approval Date" is completed this Contract is not subject to FIRB Approval and clause 29 does not apply.

U. BUYER'S TAX FILE NO:

V. GUARANTORS: Name:

Address:

Name:

Address:

SUMMARY OF SCHEDULES

FIRST SCHEDULE: THE PLANS

SECOND SCHEDULE: DIRECTORS' GUARANTEE

THIRD SCHEDULE: DEED APPOINTING ATTORNEY

DRAFT

EXPLANATION:

- (a) The Seller is or is entitled to become the registered owner of the land described as Lots 3, 4, 5 and 6 on Crown Plan M56714 in the County of Canning Parish of Mooloolah situate at 22-28 Second Avenue, Maroochydore, Queensland ("the Land").
- (b) The Seller intends, subject to the terms of this Contract, to construct a building substantially in accordance with Plans and Specifications prepared by the Seller's Architect and approved or to be approved by the Maroochy Shire Council ("the MSC") so that upon completion there will be cause to establish a Community Titles Scheme over the Land. The basic plans (for identification purposes only) are referred to in the First Schedule. The Seller reserves to itself (which is acknowledged by the Buyer) that the Seller may take such amendments modifications or variations to the Plans as the Seller, in its discretion, determines so as to obtain all necessary approvals or as may be determined by the Seller to be desirable for the Scheme Improvements and their efficient and practical operation and use.
- (c) The Buyer wishes to buy from the Seller an estate in fee simple in the Lot upon establishment of the Scheme.
- (d) A separate freehold Title to the Lot is to be conveyed to the Buyer in terms of this Contract.

TERMS AND CONDITIONS

IT IS AGREED:

1. BUYERS ACKNOWLEDGEMENTS:

The Buyer acknowledges and confirms that:

- 1.1 In entering into this Contract, the Buyer has **not** relied on any representation, promise or statement made by the Seller or the Seller's agent or any other person or company for and/or on behalf of the Seller that is not expressly set out and contained in this Contract or the Disclosure Statement and that the Buyer has signed this Contract after making the Buyer's own investigations and enquiries.
- 1.2 Any information given in finance calculations, advertising, brochures, models and the like for the development is generic and indicative only and has not been relied upon by the Buyer in entering into this Contract.
- 1.3 The Buyer accepts the Seller's rights under Explanation (b).
- 1.4 Prior to signing this Contract, the Buyer received, read and understood and sought and received such legal and other advices as the Buyer deemed necessary and expedient in respect of this Contract and the following documents:-
 - 1.4.1 The Contract Warning Statement under s213(5) of the Act;
 - 1.4.2 This Contract;
 - 1.4.3 The Disclosure Statement under s213(1) of the Act;
 - 1.4.4 The Statement under s21(1) of the Land Sales Act;
 - 1.4.5 The Statement as relates to the Power of Attorney Clause 20 under s219 of the Act.
- 1.5 When this Contract was given to the Buyer its first or top page comprised a "Contract Warning" statement as required by s213(5) of the Act.
- 1.6 The Seller has recommended to the Buyer that the Buyer obtain independent legal advice before signing this Contract. The Buyer has had the opportunity to seek independent legal advice and is well aware that it would be prudent to obtain independent legal advice before signing this Contract.
- 1.7 The Buyer shall have no rights to object to and will accept the Lot subject to:-

- 1.7.1 any easements, rights of way, encroachments, licences, leases, grants of exclusive use or other rights encumbrances or easements which affect the common property of the Scheme;
- 1.7.2 any conditions imposed by the Council on the Seller concerning the public use of any parts of the common property.
- 1.8 The Buyer consents in terms of s73 of the Property Law Act to the Seller selling or mortgaging or remortgaging the Land as determined by the Seller and where applicable the Buyer will have no right to terminate this Contract, claim compensation, delay settlement or withhold any part of the Purchase Price or make any other claim in consequence of any of the above matters.

1.9 INTERPRETATION

In this Contract unless a contrary intention appears:

- 1.9.1 The words of the masculine gender shall be deemed to include all genders and words of singular number shall include the plural and vice versa and where more than one person is Buyer, liability shall be joint and several;
- 1.9.2 "The Balance of the Price" means the Purchase Price less the Total Deposit;
- 1.9.3 Reference to persons includes Bodies Corporate;
- 1.9.4 "The Seller" means the persons mentioned in Item B together with its heirs, successors, administrators and permitted assigns.
- 1.9.5 "The Buyer" means the person or persons or corporation/s named as Buyer mentioned in Item D together with its heirs, successors, administrators and permitted assigns;
- 1.9.6 The headings contained herein are for reference purposes only and do not form part of this Contract and they are to be disregarded in the interpretation hereof;
- 1.9.7 "The Architect" means the Architect nominated from time to time by the Seller.
- 1.9.8 All words used in this Agreement which are defined in the "*Body Corporate and Community Management Act 1997*" bear the same meaning set forth in the Act but, in particular, and for better and quicker explanation the following words and expressions mean:-

"the Act"

- **Body Corporate and Community Management Act 1997** as from time to time amended;

"Body Corporate"

- The Body Corporate for the Scheme to be created on recording the Community Management Statement under the Act;

"Body Corporate Levies"

- All contributions levied on the owner of the Lot by the Body Corporate under the Act;

"Body Corporate Notice"

- Any notice required under the Act to be given to the Body Corporate upon transfer of the Lot;

"Common Property:"

- Has the meaning given to it in the Act;

"Community Management Statement" or "CMS"

- The Community Management Statement for the Scheme recorded in accordance with the Act. A copy of the proposed Community Management Statement (which may be amended by the Seller) is set out as an annexure to the Disclosure Statement given to the Buyer before the Buyer signed this Contract;

"the Council"

- Means the Maroochy Shire Council ("MSC") or any local authority which replaces it;

"Local Authority"

- Means the MSC or its replacement;

- "Disclosure Statement" The Disclosure Statement given to the Buyer before the
- Buyer signed this Contract;
- "Scheme" - The Community Titles Scheme to be created under the Act
by the Seller comprising the Scheme Land and the
Community Management Statement;
- "Scheme Land" - The Land;
- "Scheme Improvements" - The improvements to be made to the Scheme Land
(including the building of which the Lot will be part);
- "Seller's Consultants" - The Seller's Architect, Engineer, Project Manager, Body
Corporate Advisor, Surveyor, Builder, Solicitor, Accountant
and the like as shall from time to time, be nominated by the
Seller;
- "Subdivision Plan" - A building format plan to be lodged over the Scheme land
which, upon registration, will create a separate indefeasible
title for the Lot under the "Land Title Act 1994" and a
preliminary plan of which is set forth in the First Schedule;
- "Registration" - When used in reference to the subdivision plan registration
of the subdivision plan in the Office of the Department of
Natural Resources, Division of Freehold Land Titles; and
- "Transfer documents" - Mean:
(i) the Form of Transfer under the Land Title Act 1994
required to transfer title in the Lot to the Buyer; and
(ii) any other document to be signed by the Seller
necessary for stamping or registering the Transfer.

1.9.9 "The Guarantor" means the person/s or corporation/s named as the Guarantor in Item V together with his/her heirs, successors, administrators and permitted assigns.

2. DATE OF AGREEMENT

The Seller and Buyer agree that the date shown in Item A shall be the date upon which the parties have entered into this Contract. The Contract is to be dated the day it is signed by the Seller. The Seller and the Buyer are bound for all purposes of the Contract when the Buyer or the Buyer's agent received a copy of the Contract signed by the Seller and the Buyer.

3. PROPERTY SOLD

The Seller sells to the Buyer and the Buyer buys from the Seller subject to the provisions of this Contract an estate in fee simple in the Lot free from any mortgage or other encumbrance except as referred to in Item R.

4. PRICE

4.1 The price payable by the Buyer to the Seller for the Lot is the sum stated in Item I and is to be payable in the following manner:-

4.1.1 The deposit as specified in Item J shall be paid on or before the signing of this Contract by the Buyer or in the case of the balance deposit (if any), specified in Item K at the time and in the manner specified in Item K by the Buyer to the Stakeholder in accordance with the provisions of the Land Sales Act 1984. The Seller and the Buyer acknowledge and agree that the Stakeholder named in Item O unless otherwise agreed shall be the Trustee for the purposes of this Contract pursuant to the provisions of the Land Sales Act 1984, and the terms "Stakeholder" and "Trustee" shall both mean the Trustee for the purposes of and under the provisions of the Land Sales Act 1984. At the sole discretion

of the Seller the deposit shall be deposited in an Interest Bearing Trust Account in the name of the Stakeholder with a bank or building society carrying on business under the authority of an Act of the State of Queensland or of the Commonwealth of Australia of the Seller's choice ("the bank") and to be maintained and dealt with by the Stakeholder in the following manner:-

- 4.1.1.1 If this Contract shall not proceed to completion for any reason other than the default of the Buyer then and without prejudice to the rights and remedies of the Seller and the Buyer pursuant to this Contract any interest which shall have accrued on the deposit moneys shall become the property of the Buyer and shall be paid by the Stakeholder to the Buyer as soon as is permissible by law;
 - 4.1.1.2 If this Contract shall not proceed to completion because of the default of the Buyer then and without prejudice to the rights and remedies of the Seller and the Buyer pursuant to this Contract any interest which shall have accrued on the deposit moneys shall become the sole property of the Seller and notwithstanding the provisions of Clause 8 hereof shall be paid by the Stakeholder to the Seller as soon as is permissible by law.
 - 4.1.1.3 If this Contract of sale proceeds to completion then upon settlement any interest which shall have accrued on the deposit moneys shall become the property of the Seller and the Buyer in equal shares.
 - 4.1.1.4 Having consideration to the amount of the deposit and the expected duration of the proposed investment, if the Seller in the Seller's sole discretion determines that investment of the deposit is not commercially viable then, in that case, the Stakeholder shall not be required to make such investment;
 - 4.1.1.5 The Stakeholder shall be entitled to charge and is authorised by both Seller and Buyer to deduct and pay to itself from the interest a reasonable fee of not less than \$100.00 and any bank fees incurred by the Stakeholder on account of the administration of the investment during the term of Contract; and
 - 4.1.1.6 To facilitate the investment of the deposit the Buyer must insert at Item U or, in the alternative, notify the Stakeholder of its Tax File Number within four (4) days of the date of this Contract.
- 4.2 The balance of the price shall be paid by the Buyer to the Seller in such manner as the Solicitor for the Seller may in writing direct on the date for completion in accordance with Clause 5.
- 4.3 If the deposit or any part of the deposit is not paid as detailed or is paid by cheque which is not duly honoured on presentation or if the Bank Guarantee is not provided by the due date, then the Buyer shall immediately be in substantial breach of an essential condition of this Contract and the Seller may terminate this Contract and forfeit the deposit. Whether or not the Seller terminates this Contract, the Seller shall be entitled immediately to recover as a liquidated debt from the Buyer so much of the deposit as has not been paid by the Buyer or guaranteed on the Buyer's behalf.
- 4.4 4.4.1 The Buyer will be deemed to have satisfied the obligation to pay the deposit of any part of it if the Buyer provides to the Seller by the date or dates upon which it is to be paid a bank guarantee which is:
- 4.4.1.1 in a form and from a bank acceptable to the Seller; and
 - 4.4.1.2 for an amount equal to the amount payable.
- 4.4.2 If the bank guarantee is called on by the Seller the amount paid under it will form the deposit it represents.
- 4.5 Except for the deposit, payment of any moneys under this Contract shall be made by a bank cheque drawn by any bank carrying on business in Queensland under the laws of the Commonwealth of Australia or Queensland.

- 4.6 Under no circumstances is the deposit to exceed ten per cent (10%) of the Purchase Price before settlement of this Contract. If any circumstance arises which could lead to the deposit exceeding ten per cent (10%) of the Purchase Price before settlement then such circumstance will be conditional upon settlement. If for any reason that condition cannot operate then the Buyer will immediately be entitled to a refund of any moneys that would otherwise result in the ten per cent (10%) being exceeded or to reduce any Bank Guarantee to an amount equal to ten per cent (10%) of the Purchase Price.

5. **COMPLETION AND POSSESSION**

- 5.1 Completion shall be effected:

- 5.1.1 On the day which is fifteen (15) days after the day the Seller or the Solicitors for the Seller send a notice to the Buyer advising that the subdivision plan has been registered; or
- 5.1.2 If the subdivision plan is registered as at the date of this Contract, thirty (30) days after the date of this Contract; ("the date of completion")

PROVIDED THAT if the subdivision plan is not registered by the date set out in Item H then either party may rescind this Contract by written notice to the other and on cancellation all moneys paid by the Buyer (except as provided by Clause 4.1.1.5) shall be refunded without deduction or, where applicable, the Bank Guarantee shall be returned to the Buyer and neither party shall have any further claim against the other under this Contract.

PROVIDED FURTHER THAT should the construction of the Scheme Improvements be delayed due in whole or part to one or more of the following:-

- 5.1.2.1 damage and/or delay by fire or explosion or earthquake or lightning or storm or tempest or war or terrorist acts or civil commotion or strikes;
- 5.1.2.2 in consequence of proceedings being taken or threatened by or disputes with adjoining or neighbouring owners;
- 5.1.2.3 on account of the delay of any local or other authority in giving any necessary approval to the erection of the Scheme Improvements;
- 5.1.2.4 inclement weather;
- 5.1.2.5 any other cause, matter or thing beyond the control of the Seller;

AND IF the Seller's Consultant so certifies and states in such certificate (which shall be conclusive evidence of the delay) the period so caused then the Seller may at any time thereafter by written notice to the Buyer substitute for the date shown in Item H another date which is not later than the original day by more than the period of the delay certified to by the Seller's Consultant.

- 5.2 In exchange for the balance of the price and any other moneys owing by the Buyer pursuant to this Contract, the Seller shall cause to be delivered to the Buyer the following:

- 5.2.1 The transfer documents;
- 5.2.2 Executed releases of all mortgages or charges save as are expressly excepted herein capable of registration and, if the same is unstamped, the stamp duty payable thereon together with registration fees;
- 5.2.3 Body Corporate Notices;
- 5.2.4 Vacant possession of the Lot;
- 5.2.5 The keys and door opening codes (if any) for the Lot;
- 5.2.6 If applicable, the Bank Guarantee;

- 5.2.7 A copy of the Certificate of Classification for the building (unless already given);
- 5.2.8 If the Lot is purchased subject to any easement not yet registered, the signed easement in registerable form together with appropriate stamp duty (if not stamped) and registrations fees. In such event the Buyer shall do everything necessary to register the easement and shall cause a copy of the Registration Confirmation Statement to be delivered to the Seller or its Solicitors as soon as possible after registration has been effected.
- 5.3 The transfer documents and Body Corporate notices must be prepared by the Buyer or Buyer's Solicitor and given to the Seller's Solicitors at least seven (7) days before the date of completion. However, nothing shall prevent the Seller's Solicitor from preparing the transfer documents and having same signed and available for delivery to the Buyer on settlement or earlier if required for stamping purposes.
- 5.4 The Buyer shall sign all documents and do all things reasonably required of the Buyer by the Seller to complete this Contract.
- 5.5 If by the date of completion the Council has not issued a Certificate of Classification for the building (if applicable), the Seller will, at its discretion, be entitled by notice in writing to the Buyer to postpone the date of completion to the day which is two (2) days after the day the Seller sends a notice to the Buyer advising that the Certificate has issued.
- 5.6 The Buyer must pay the balance of the price by bank cheque as the Seller directs and the cost of such bank cheques are the responsibility of the Buyer.

6. TIME AND PLACE FOR COMPLETION

Completion shall be effected at such time and place as may be agreed upon by the Seller and the Buyer and failing agreement as nominated by the Seller. The time for completion shall, unless otherwise agreed to in writing by the Seller, be between the hours of 9.00am and 3.00pm on the date for completion. Despite any agreement by the parties as to a specific time for completion the provisions of Clause 19 do not apply in respect of that time.

7. ADJUSTMENTS

- 7.1 Where a separate assessment of rates, land tax, insurance premium, or other outgoings in respect of the Lot has issued then in that case all rates, taxes and outgoings with respect to the Lot shall be the Seller's liability up to and including the date of registration of the Subdivision Plan and thereafter shall be the liability of the Buyer in which case an apportionment shall be made on a time basis.
- 7.2 If a separate assessment of rates, land tax, insurance premium or other outgoings has not issued in respect of the Lot, then an apportionment will be made of the assessment or outgoing relating to the whole of the Land and the Scheme Improvements and such apportionment will be made on the basis that the Lot is liable for that proportion thereof which the contribution lot entitlement of the Lot bears to the aggregate contribution lot entitlement of all lots comprised in the Scheme or to the aggregate contribution lot entitlement of all lots comprised in the assessment as the case may be with the Seller's liability being up to and including the date of registration of the Subdivision Plan.
- 7.3 The Buyer must pay to the Seller at settlement a proportion of any amount the Seller has paid under s191 of the Act. Such proportion will equal the proportion which the Interest Schedule lot entitlement of the Lot bears to the total Interest Schedule lot entitlement for lots in the Scheme with the Seller's liability being up to and including the date of registration of the Subdivision Plan.
- 7.4 If the Buyer is unable to obtain clearance from Land Tax, in respect of the Scheme Land or the Lot, as the case may be, the Buyer shall not be entitled to refuse to complete the Contract or to require retention of any of the balance purchase money but shall accept the undertaking of the Seller hereby given to pay Land Tax in respect of its ownership of the Scheme Land or the Lot as at midnight on 30th June preceding the date of completion and for any period prior to that date for which the same may be unpaid.

7.5 Adjustable items must be adjusted on the amount paid - if already paid, or, for adjustable items assessed but unpaid – on the amount payable (excluding any discount).

8. DEFAULT

8.1 If the Buyer fails to comply with the conditions of sale or any of them then (in addition to any other remedy available to the Seller) the Seller may:-

8.1.1 forfeit to the Seller the moneys paid or to have been paid on account of the price by the Buyer to the extent of 10% of the purchase price;

8.1.2 without notice to the Buyer cancel this Contract and if possession shall have previously passed from the Seller to the Buyer, resume possession of the Lot;

8.1.3 sue the Buyer for breach of contract and/or specific performance and damages in addition to or in lieu thereof;

8.1.4 without notice to the Buyer resell the Lot by public auction or by private contract with power to vary or rescind any contract for sale and to buy in at any auction and the deficiency in price on such resale and the expense of and incidental to repossession and to the present sale and resale and any abortive attempt to resell together with all rates, taxes and other outgoings accrued due in respect of the Lot at the date of resale which were payable by the Buyer under the terms of this agreement shall be paid to the Seller by the present Buyer and shall be recoverable as liquidated damages;

8.1.5 do all or any of the above things at its option.

8.2 The Buyer hereby indemnifies the Seller against any loss which the Seller sustains as a result of the Buyer's default and without limiting the generality of this indemnity the Seller's loss will include interest and holding charges incurred by the Seller and legal costs (on an indemnity/solicitor and own client basis) which the Seller may incur.

8.3 Any profit on a resale by the Seller as a result of the Buyer's default shall belong to the Seller.

9. INTEREST ON LATE PAYMENTS

Without derogating from the strict effect of any other clause in this Contract any moneys (including the deposit) payable under this Contract not paid when payable shall bear interest at the rate of 15% per annum simple interest from the original due date of payment to and including the date payment is made which interest shall be paid upon demand being made for payment and failing such demand being made shall be paid contemporaneously with the payment of the balance of the price. Any judgment for any such moneys shall likewise bear interest at that rate from the date of judgment until and including the date of payment.

10. TITLE

The Title to the Lot will be subject to:-

10.1 the provisions of the *Land Title Act 1994*;

10.2 the Act and the easements for support, shelter, projections and services affecting the Lot under the Act;

10.3 the Community Management Statement;

10.4 all notifications, easements and restrictions (other than any Mortgage) on the title for the Scheme Land and the title for the Lot;

10.5 any variation to the Lot between any plan provided in the First Schedule or as otherwise produced to the Buyer and the Subdivision Plan as the Seller may be permitted to make under this Contract;

- 10.6 any transfer, lease, easement, or other right over the Common Property or any part thereof given to the Local Authority, or any other statutory authority or the owner of the adjacent lots or any other adjacent land or any other Buyer of a Lot or Lots in the Scheme; and
- 10.7 the easements (if any) and anything described or referred to in this Contract or the Disclosure Statement referred to and anticipated in this Contract.

AND the Buyer may not refuse to complete or delay the due completion of this Contract or claim compensation or withhold any part of the Purchase Price because of any of the above matters.

11. SELLER'S STATEMENT

- 11.1 The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Lot;
- 11.2 The Seller states that, except as disclosed in this Contract, each of the following statement is to the best of the Seller's knowledge and belief accurate at the time the Seller executes this Contract;
- 11.2.1 the Seller has free and unqualified capacity and power to contract and complete this Contract;
- 11.2.2 the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this contract; and
- 11.2.3 if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the completion of this Contract.
- 11.3 The Seller states that, to the best of the Seller's knowledge and belief, except as disclosed in this Contract, each of the following statements will be accurate at the date of completion:
- 11.3.1 there is no current litigation by any person claiming an estate or interest in the Lot;
- 11.3.2 there is no unsatisfied judgment, order or writ of execution which affects the Lot;
- 11.3.3 no order has been made under Part 11 of the *Property Law Act 1974* which would operate as a charge on the Scheme Land;
- 11.3.4 there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
- 11.3.5 no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Lot may be rendered liable to forfeiture to the Crown;
- 11.3.6 In respect of the Seller:-
- 11.3.6.1 the Seller is not in liquidation;
- 11.3.6.2 no action has been taken by or against the Seller which could lead to the winding up of the Seller;
- 11.3.6.3 the Seller is not under official management;
- 11.3.6.4 an administrator, controller or managing controller has not been appointed to the Seller or in respect of the Scheme Improvements; and
- 11.3.6.5 a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and

- 11.3.7 the Seller is the registered owner of the Land.
- 11.4 If a statement contained in either Clause 11.2 or Clause 11.3 is not accurate and, as a result, the interest of the Buyer is affected then the Buyer's rights against the Seller shall be resolved by way of a claim for compensation or equivalent provided the claim for compensation is given to the Seller within seven (7) days of the day the Buyer becomes aware of the inaccuracy.
- 11.5 Notwithstanding the Buyer making a claim under Clause 11.4 the Buyer must still complete this Contract and any such claim can be subsequently pursued by the Buyer against the Seller.
- 11.6 The Buyer shall not be entitled to make any objection, requisition or claim for damages or compensation or delay the due completion of this Contract in respect of or by reason of:-
- 11.6.1 Any boundary of the Scheme Land being not fenced or any boundary fence being not upon or within such boundary;
- 11.6.2 The name referred to in Item G not forming part of the name of the Body Corporate incorporated upon the creation of the Scheme;
- 11.6.3 Any variations as regards the Lot between the Plans in the First Schedule and the Subdivision Plan as registered where such variation or variations shall be of no substantial consequence in terms of the size, appearance and utility of the Lot;
- 11.6.4 The Seller or the Office of the Department of Natural Resources Division of Freehold Land Titles allotting a different number from the number allotted by this Contract to the Lot on registration of the Subdivision Plan;
- 11.6.5 Any alterations in the number of lots in the Subdivision Plan or the numbering, size, location, lot entitlement (contributions or interests) or permitted use of any lot in the Subdivision Plan or in or to the common property PROVIDED THAT the lot entitlement (contribution or interest) of the Lot and the aggregate lot entitlement (contribution or interest) of all lots in the Subdivision Plan shall not thereby be substantially varied from that provided in the Community Management Statement as detailed in the Disclosure Statement.
- 11.6.6 The By-laws of the Body Corporate as provided in the Community Management Statement and/or any variations thereto which the Seller may in its absolute discretion deem desirable or necessary;
- 11.6.7 The existence or passage through or over the Scheme Land or any adjoining property of mains, pipes, wires or connections of any water, sewerage, drainage, gas, electricity, telephone or other system or service including any necessary service easement whether statutory or otherwise and whether to the lot or other adjoining property or jointly or to both or otherwise;
- 11.6.8 The Seller causing the Body Corporate to have its first annual general meeting whilst it is the sole member of the Body Corporate and electing the Committee of the Body Corporate and attending to any other matters of business as the Seller shall deem fit and necessary.
- 11.6.9 The Seller or the Body Corporate granting easements or rights of way to the Local Authority and/or the owner of the adjoining land over common property;
- 11.6.10 The Office of the Department of Natural Resources Division of Freehold Land Titles allotting only one indefeasible title to the Lot where the lot comprises more than one proposed lot in the subdivision plan;
- 11.6.11 Any matter or thing done or caused to be done under Clause 20;
- 11.6.12 Any alteration or variation in the Plans as set out in the First Schedule as may become necessary prior to or during the course of construction by reason of matters beyond the control of the Seller which may result from, inter alia, the requirements and directions of any Governmental Authority or as may be required by the practical

exigencies of construction either by, but without limiting the generality of the foregoing, the dictates of good building practice and/or the availability of materials, but expressly including as permissible alterations or variations any matter or thing done or caused to be done by the Seller under Clause 20;

- 11.6.13 The easements created or implied by the Act; and
- 11.6.14 Any matter or thing done by the Seller under this Clause or Clause 12.5.
- 11.6.15 Any matter or thing done by the Seller under Clauses 32, 35.1, 35.2 and 35.3.

12. ACKNOWLEDGEMENTS

The Buyer acknowledges:

- 12.1 That the Buyer is aware of the rights given to the Buyers by Chapter 5 of the Act and by s21 of the *Land Sales Act 1984*;
- 12.2 That the Buyer will not be materially prejudiced by any of the matters referred to in sub-clause 11.6 of this Contract or by any alteration referred to in that sub-clause and in this Clause 12;
- 12.3 That the Buyer is aware of the rights of exclusive use provided by the By-laws and of the provisions for the granting of grants of exclusive use provided in this Contract and in the By-law;
- 12.4 That the Buyer is aware that upon registration of the Subdivision Plan the Seller will cause the Body Corporate to enter into an agreement with a Body Corporate Manager in the terms provided in the Disclosure Statement with such amendments or variations as the Seller, in its absolute discretion, shall deem necessary and expedient; and
- 12.5 The Seller may make changes to the Community Management Statement, the Scheme Improvements, the Building and the Lot including changes to:-
 - 12.5.1 the name of the Scheme;
 - 12.5.2 the design, size, location or use of lots in the Scheme and the Building;
 - 12.5.3 the design and construction of the Scheme Improvements and the Lot;
 - 12.5.4 the Subdivision Plan;
 - 12.5.5 the entitlements of the Lot, by up to 5% of the proportion of the Lot entitlement in comparison to the aggregate Lot entitlement;
 - 12.5.6 the size of the Lot, by up to 5% from that shown on the Plan as set out in the First Schedule;
 - 12.5.7 the budgets or Body Corporate levies for the first year of the Scheme by up to 15% of the total Body Corporate levies payable;
 - 12.5.8 the car parks and storage areas (if any);
 - 12.5.9 the common property; and
 - 12.5.10 comply with any requirement or recommendation of the Seller's consultants in relation to any matter or thing referred to in this Clause 12;

and may:

- 12.5.11 call an extraordinary or annual general meeting of the Body Corporate while the Seller is the only member of the Body Corporate or whilst the Seller is attorney of the Buyer under the Power of Attorney and to pass any and all resolutions as the Seller deems necessary and expedient to facilitate any matter or thing expressed, implied or anticipated by this Contract;

- 12.5.12 cause the election or confirmation of the Committee of the Body Corporate;
- 12.5.13 cause the Body Corporate to enter into any agreement referred to in the Disclosure Statement and to attend to anything else which the Seller considers necessary for the establishment and operation of the Scheme and the Body Corporate;
- 12.5.14 do or cause to be done any act or thing the Seller determines necessary and expedient for the completion of the Scheme Improvement under Clause 20; and
- 12.5.15 attend to anything else which the Seller considers necessary and expedient for the proper establishment, administration and operation of the Scheme and the Body Corporate.

13. IDENTIFICATION SURVEY

- 13.1 The Buyer acknowledges, confirms and agrees that the Seller gives no warranty that buildings or improvements of owners of adjoining lands do not or will not at the date of completion encroach on the Scheme Land. The sale is subject to any such encroachment which may exist and the Buyer shall not be entitled to make any objection, requisition or claim for compensation nor fail to complete this Contract in relation to any such encroachment;
- 13.2 The Buyer further acknowledges, confirms and agrees that it shall be the responsibility of the Buyer to satisfy himself as to the position of the Lot within the Subdivision Plan.

14. MISTAKE

If any mistake be made in the description of the Scheme Land, the Lot or the common property in this Contract or any other error shall appear in the particulars thereof set out in this Contract, such mistake or error shall not annul this sale unless the Buyer's remedies are so permitted by virtue of the provisions of the Act but a compensation or equivalent shall be given or taken by the Seller or the Buyer as the case may require but, in any event, the Buyer must complete this Contract by the payment of the balance of the price on the date of completion.

15. NO MERGER

Notwithstanding completion of this transaction any general or specific condition or any part or parts thereof to which full effect is not given by the conveyance and which are capable of taking effect after completion shall remain of and in full force and effect.

16. REPRESENTATIONS

- 16.1 The Buyer acknowledges, confirms and agrees that the Buyer has not relied upon any representation made by the Seller, the agents of the Seller or any person or corporation in entering into this Contract other than as set out specifically herein and that the conditions herein contained constitute the entire agreement between the Seller and Buyer notwithstanding any negotiations or discussions prior to the execution hereof and each party expressly acknowledges, confirms and agrees that it has not been induced to enter into this Contract by any representation verbal or otherwise made by or on behalf of any other party which is not set out in the body of this Contract or the Schedules and the Disclosure Statement.
- 16.2 Subject to any liability which cannot be excluded by the *Trade Practices Act 1974* and the *Corporations Law* the Seller disclaims all liability to any person relying on any information contained in any material or representations alleged to have been made to the Buyer other than contained in this Contract or the Schedules and the Disclosure Statement in respect of any loss or damage (including consequential loss or damage) howsoever caused which may be suffered or arise directly or indirectly in respect of such information.

17. NOTICES

- 17.1 Any notice given under this Contract:
 - 17.1.1 must be in writing;

- 17.1.2 may be given by a party or its solicitor; and
- 17.1.3 may be:
 - 17.1.3.1 sent by prepaid ordinary post to the address of a party or its solicitor as stated in the Reference Schedule ("the Party's Address");
 - 17.1.3.2 sent to the facsimile number of a party or its solicitor as stated in the Reference Schedule;
 - 17.1.3.3 sent to the email address of a party or its solicitor as stated in the Reference Schedule; or
 - 17.1.3.4 if otherwise delivered at the Party's Address, upon delivery.
- 17.2 A notice will be received:
 - 17.2.1 if sent by post, on the second business day after posting;
 - 17.2.2 if sent by facsimile or by email on production of a transmission report by the sending machine which indicates that the facsimile or email was sent in its entirety to the facsimile number or email address of the recipient; or
 - 17.2.3 if otherwise delivered at the Party's Address, upon delivery.
- 17.3 Notices given after 5.00pm will be treated as given on the next business day.
- 17.4 Notices or other written communications by a party's solicitor will be treated as given with that party's authority.

18. GUARANTEE

If the Buyer is a company, then the Directors thereof, in signing this Contract (and identified in Item V), expressly agree to be bound by the terms and conditions of the guarantee and indemnity being the Second Schedule. The Buyer agrees it is a fundamental condition of this Contract to be fulfilled by the Buyer that the Buyer have the Directors of the company sign this Contract in their capacity as Guarantor. If the Directors do not sign the guarantee then that will constitute a fundamental breach of this Contract by the Buyer entitling the Seller to the remedies provided in Clause 8.

19. TIME OF THE ESSENCE

Time shall in all cases and in every respect be deemed to be the essence of this Contract. If it is agreed to vary a time requirement, time is to be of the essence in respect of such time variation. The Seller will not be contractually bound to any time variation unless it is verified in writing being signed by or for and on behalf of the Seller.

20. POWER OF ATTORNEY

- 20.1 The Buyer irrevocably appoints the Seller and, if the Seller is a company, each director and secretary of the Seller, and their substitutes, jointly and severally, to be attorney of the Buyer for the following purposes:
 - 20.1.1 to attend and/or vote in the name of the Buyer at all or any meetings of the Body Corporate or of the Committee of the Body Corporate to the exclusion of the Buyer if present at any such meeting whereat the Seller requires such exclusion; or
 - 20.1.2 to complete, sign and lodge any voting paper (or any other document including a proxy form and a Notice under the Regulation Module applying to the Scheme) to allow the Seller to vote in the name of the Buyer at all or any meetings of the Body Corporate or of the Committee of the Body Corporate to the exclusion of the Buyer in respect of any motion or resolution for or relating to any one or more of the following:-
 - 20.1.2.1 any new Community Management Statements to be recorded to facilitate the Development identified in the Community Management Statement or

any variation thereof from time to time as determined by the Seller under the provisions of this Contract, which development or variation necessitates the lodgement of new Community Management Statements so as to effect the development and/or variations;

- 20.1.2.2 the granting or issuing of a Common Property Authority to a service contractor or letting agent under the Regulation Module applying to the Scheme;
- 20.1.2.3 the issue of a continuing contravention notice under the Act or the issue of a future contravention notice under the Act;
- 20.1.2.4 the issue of any information request notices under the Act;
- 20.1.2.5 an application being made for an order of an adjudicator under the Act;
- 20.1.2.6 an appeal to be lodged under the Act;
- 20.1.2.7 the commencement of a proceeding pursuant to the Act;
- 20.1.2.8 the adoption of administrative and sinking fund budgets for the Body Corporate;
- 20.1.2.9 any proposal involving spending above the limit for Committee spending;
- 20.1.2.10 any proposal by the Body Corporate to take any of the actions or steps permitted under the Regulation Module proposed to apply to the Scheme;
- 20.1.2.11 to complete, sign and lodge any written consent under the Act or under any section of the Regulation Module proposed to apply to the Scheme, as may be required to facilitate and perfect an allocational grant under any of the exclusive use by-laws contained in the Community Management Statement;
- 20.1.2.12 any matter or thing the Seller, in its absolute discretion deems necessary and expedient to do to enable The Development to be constructed to its final state notwithstanding that completion of the Contract has been effected;
- 20.1.2.13 to grant rights of exclusive use of part or parts of the common property to Buyers of other lots in the Building for such purposes as the Seller, in its absolute discretion, deems appropriate;
- 20.1.2.14 the imposition of any levies (including for the payment of insurance);
- 20.1.2.15 the negotiation and execution of any easements to or from any person or entity;
- 20.1.2.16 the negotiation and execution of any agreements or documents in respect of a proposed grant of a table licence(s)/outdoor dining permit(s) with the Local Authority or other government or similar government department;
- 20.1.2.17 the negotiation and execution of any documents amending any service contract;
- 20.1.2.18 the negotiation for and the granting or amending of any exclusive use areas including basement layout, car parking, storage, outdoor dining facilities and any other facilities as the Seller deems necessary and expedient;
- 20.1.2.19 the negotiation and execution or modification of any agreement to assist in the trading of and to facilitate the efficient operation of the lots (if any) within the Scheme Improvements;

- 20.1.2.20 to cause the Body Corporate to grant rights of exclusive use and enjoyment to buyers of other lots in the building in respect of any common property (other than any grant of exclusive use to the Buyer in this Contract) including any car spaces or areas of exclusive use on any part or parts of the common property or to grant an easement over common property.
 - 20.1.2.21 to sell for a nominal consideration or such other consideration as the Seller, in its absolute discretion, deems appropriate any part of the common property and facilitate its amalgamation with any lot(s) or creation of any lot(s) from the same;
 - 20.1.2.22 to do any matter or thing and to pass any motion/s or resolution/s as may become necessary and/or expedient to facilitate any matter or thing the Seller determines should be done under paragraph 20.1.2.21 of this Power of Attorney;
 - 20.1.2.23 to do, sign, execute and deliver any matter or thing and to pass any motion(s) or resolution(s) as may become necessary and/or expedient to facilitate and give effect to any matter or thing as the Seller determines, requires, directs or orders should be done to facilitate or give effect to any matters anticipated by any "additional car parks" clause of this Contract;
 - 20.1.2.24 to do, sign, execute and deliver any matter or thing and to pass any motion(s) or resolution(s) as may become necessary and/or expedient to facilitate and give effect to any matter or thing as the Seller or any of the relevant Authorities determine, require, direct or order should be done to facilitate or give effect to any of the matters anticipated by this Clause 20 or by any other provision of this Contract.
- 20.2 For the purposes of paragraph 20.1.2.12 The Development shall mean and include:
- 20.2.1 All of the construction and other works necessary and expedient and as would ordinarily and reasonably be anticipated as being usually associated with a development of the nature, size and design of the Development being "....." comprising, without limitation:
 - 20.2.1.1 the commercial component ("the Lots"); and
 - 20.2.1.2 the Common Property Facilities component ("the Common Property"); and
 - 20.2.2 Such variations, amendments and alterations to the Plans as the Seller determines appropriate and which the Seller is permitted to do under the provisions of this Contract;
- 20.3 This Clause is effective as a Deed.
- 20.4 The Buyer will at all times and as and when requested by the Seller ratify and confirm all and anything done by the Seller under this Clause.
- 20.5 The Power of Attorney in this clause remains in full force and effect for a period of one (1) year from the date the Scheme is established.
- 20.6 While this Power of Attorney remains in force, the Buyer must not transfer the Lot except to a person who has first signed a Deed in the form provided in the Third Schedule and delivered it to the Seller or the Seller's solicitor. If the Buyer does not comply with this provision the Buyer indemnifies the Seller against all loss and damage incurred by the Seller as a result.
- 20.7 The Buyer acknowledges having received a Statement under s219 of the Act prior to the grant of this Power of Attorney.
21. **STAMP DUTY & COSTS**

All stamp duty on this Contract and on any duplicate of this Contract and on any guarantee or covenant executed in accordance with the Contract, and any duty and registration fees relating to the transfer shall be paid by the Buyer but the Seller and the Buyer shall each pay their own costs of and incidental to this sale and purchase.

22. CONSTRUCTION

- 22.1 The Seller will cause the Scheme Improvements to be constructed in general accordance with the Plans contained in the First Schedule but subject always to the requirements of the Local Authority or any other competent authority and the rights of the Seller under the terms of this Contract.
- 22.2 The Buyer is not entitled to make any objection, requisition or claim for compensation nor fail to complete this Contract by reason of any alteration or variation in the Plans contained in the First Schedule as is necessary during the course of construction by reason of matters beyond the control of the Seller which may result from the requirements or directions of the Local Authority or any other governmental or semi-governmental authority or as may be required by the practical exigencies of construction either by, but without limiting the generality of the foregoing, the dictates of good building practice and/or at the sole and unfettered discretion of the Seller matters the Seller deems to be necessary and expedient for the better economy of construction costs and/or the availability of materials provided that the Seller will take all available and reasonable steps to adhere wherever possible to the Plans.
- 22.3 Save and except for the provisions of sub-clause 22.5 the Buyer is not entitled to require the Seller to amend and make good any defects or faults whatsoever which may appear in the Scheme Improvements during or after construction, nor is the Buyer on account of any such defect or fault entitled to make any claim whatsoever against the Seller or to delay the completion of this Contract or to fail to complete this Contract.
- 22.4 The Buyer is not entitled to withhold payment of the balance of the price or any part thereof at the time of completion by reason of any such defects, shrinkage or other faults whether due to faulty materials, workmanship or any other cause whatsoever. The Buyer will be entitled to claim compensation from the Seller in respect of any failure by the Seller to comply with obligations under sub-clause 22.5;
- 22.5 As to any defects or faults due to faulty materials or workmanship which may appear in the Scheme Improvements during or after its construction and which are notified in writing to the Seller within twelve (12) weeks after the day of completion, the Seller shall rectify and make good the same within a reasonable time after the expiration of such period of twelve (12) weeks provided that the Seller's obligation under this sub-clause will not extend nor apply to:-
- 22.5.1 defects which are not notified by the Buyer to the Seller within twelve (12) weeks after the day of completion;
 - 22.5.2 defects in any equipment or appliances for which there is a manufacturer's or supplier's warranty;
 - 22.5.3 scratches, chips, dents or marks which are not notified by the Buyer to the Seller in writing on or before completion;
 - 22.5.4 concrete paths, slabs, garage floors, driveways, patios, terraces, balconies, tiled areas or other exposed concrete surfaces that develop cracks or other damage due to temperature changes or normal settlement; and
 - 22.5.5 anything which would amount to normal maintenance, fair wear and tear and minor shrinkage or minor settlement cracks.
- 22.6 Any dispute relating to defects under this clause must be referred to the Seller's Architect to decide as an expert and whose decision will be final and binding. If the Seller's Architect refuses or is unable to decide such dispute, then such dispute will be submitted to an expert in accordance with, and subject to, the Institute of Arbitrators and Mediators Australia Expert Determination Rules.

23. **MANUFACTURER'S WARRANTIES**

- 23.1 Ownership of any chattels or fixtures in the Lot will pass to the Buyer on completion free from all encumbrances or adverse claim.
- 23.2 The Seller assign to the Buyer from the completion of this Contract the benefit of any manufacturer's warranties given in favour of the Seller with respect to any chattels or fixtures in the Lot subject to the terms of any such warranties and any Act Statute or Rule of law which may prohibit or limit the Seller's right of such assignment. It is agreed that any further acts necessary to perfect any of the aforesaid assignments shall be undertaken solely by the Buyer at the Buyer's own expense.

24. **BUSINESS DAY**

- 24.1 For the purposes of this Contract the term "business day" means a weekday other than a public holiday in the place for completion.
- 24.2 If the date for completion falls on a day that is not a business day then completion shall be effected on the next business day.
- 24.3 If the finance approval date or other condition date falls on a day that is not a business day then it falls on the next business day.
- 24.4 If anything else is required to be done on a day that is not a business day it must be done instead on the next business day.

25. **RISK AND CAVEATS**

- 25.1 The Lot and any chattels or fixtures in the Lot shall remain at the risk of the Seller up until and including the date of possession (and then by the Buyer) and the Seller whilst continuing in possession will use the Lot and all improvements and items of property with reasonable care. Until the date of completion the Seller shall continue any existing policy or policies of insurance on the improvements and other property included in the sale and subject to completion being effected the Buyer shall have the benefit of any such policies but the Seller does not warrant the enforceability of any policy or the adequacy of any such insurance;
- 25.2 If the Buyer fails to tender the whole of the balance price payable at completion or purports to make any retention or withholding from the balance price payable on completion of this Contract by reason of any defect shrinkage fault or deficiency in the Lot or in relation to any part of the common property and improvements thereon the Buyer shall immediately be in fundamental breach of this Contract entitling the Seller to the remedies provided in Clause 8.
- 25.3 Neither the Buyer nor any other person on behalf of the Buyer shall lodge a caveat over the Land or any subdivided part of the Land. The Buyer irrevocably appoints the Seller and its directors, separately, to be the Buyer's attorney to sign and lodge for registration a Withdrawal of a Caveat lodged by or on behalf of the Buyer contrary to this clause and the Buyer ratifies and will ratify any such action taken by the Seller as the Buyer's attorney under this clause.

26. **SELLER'S RIGHT TO CANCEL**

If the Local Authority or any other competent authority refuses to grant or revokes any town planning permit or building permit or certificates for the Scheme Land and/or improvements the subject of this Contract or refuses to seal the Subdivision Plan or imposes any conditions on the granting of such permits or certificates or the sealing of such plan which the Seller shall be unable or unwilling to comply with or if the Seller does not obtain a sufficient number of pre-sales of lots which, in the sole and unfettered discretion of the Seller, will enable the Seller to finance the Development upon conditions acceptable to the Seller, or if the Seller, in its sole and unfettered discretion, absolutely elects not to proceed with the Scheme Improvements, then the Seller may cancel this Contract by written notice to the Buyer and upon cancellation all moneys paid by the Buyer shall be refunded without deduction and neither party shall have any claim against the other by virtue of this Contract or its cancellation **PROVIDED HOWEVER** that any accrued interest on deposit moneys held by the Seller shall, subject only to clause 4.1.1.5, also be refunded to the Buyer.

27. **SELLING AGENTS**

It is acknowledged by the Seller that the Lot has been sold by the Seller's Agent.

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28. BUYER'S ACKNOWLEDGEMENTS

The Buyer acknowledges that the Lot forms part of a complex developed by the Seller for sale and/or lease and hereby waives all rights to make objections whatever either before or after completion to the methods used by the Seller in its efforts to sell Lots in the Development including but without limiting the generality of the foregoing use of signs, use of common property and the maintenance of display lots provided that in such sales efforts the Seller shall display at all times reasonable consideration for the comfort and convenience of the Buyer and these rights will continue until such time as the Seller is no longer the registered proprietor.

29. FOREIGN OWNERSHIP

29.1 The Buyer warrants as the case may be that the Buyer may enter into this Contract and complete the same without obtaining approval from the Australian Government and/or Foreign Investment Review Board and/or The Reserve Bank of Australia or that such consents or approval as necessary have been given.

29.2 If the Buyer's acquisition of the lot requires approval under the Act, this Contract is conditional upon the Buyer obtaining the approval for the acquisition under the Act on or before the approval date specified in Item T. The Buyer must do all things necessary to obtain the approval prior to the approval date. A failure by the Buyer to fulfil this condition shall constitute a fundamental breach of this Contract entitling the Seller to the remedies provided in clause 8.

29.3 In addition to the provisions of clause 29.2 if the Buyer breaches the warranty given in this clause or fails to obtain any approval anticipated by this clause intentionally or unintentionally, the Buyer agrees to and must indemnify and compensate the Seller in respect of any and all loss, damage or costs and charges (including legal costs on an indemnity basis) incurred by the Seller at any time as being directly or indirectly the result of such breach. The warranty will not merge on completion.

30. G.S.T.

30.1 Unless otherwise specified in this Contract the purchase price includes any GST payable on the supply of the Lot to the Buyer.

30.2 If any moneys become payable by the Buyer to the Seller for any supply under this Contract within the meaning of the GST Act (other than the GST inclusive purchase price) and GST is payable on such supply, the Buyer shall be responsible for the payment of any such GST on such supply which shall be payable by the Buyer to the Seller upon the Seller providing the Buyer with a valid tax invoice for payment of the same.

31. SEVERABILITY

If anything in this Contract is unenforceable, illegal or void then it shall be read down so far as it may lawfully be read down and if it then still remains unenforceable, illegal or void, it shall be severed from this Contract and the rest of this Contract remains in force.

32. CAR PARKING (IF ANY – INDICATIVE ONLY AND SUBJECT TO THIS CLAUSE)

32.1 The Seller will not be in a position to finalise car parking, exclusive use (if any) allocations until closer to the date of completion.

32.2 The Buyer acknowledges and agrees that:

32.2.1 the Seller reserves to itself the sole right, at its absolute discretion, as to which Lots (if any) are to be allocated car parking spaces (if any) by way of grants of exclusive use;

32.2.2 the Buyer will complete this Contract and will not make nor claim any compensation or an equivalent nor delay completing this Contract on account of anything arising out of the allocation of exclusive use By-laws for car parking (if any).

- 32.3 The Body Corporate will have the rights and power as contained in the By-laws to make grants of exclusive use for car parking areas and such other facilities as the Seller shall deem necessary and expedient for the Development.
- 32.4 If any car park/s are cross hatched in the Exclusive Use Plans, the Seller acknowledges that in making the relevant allocations the Seller will allocate the areas so marked to the owner of the lot the subject of this Contract.

33. RIGHTS OF ASSIGNMENT – BY SELLER AND BUYER

- 33.1 The Seller shall have the right at any time before the completion date to transfer or assign its interest in the Land or the Lot or this Contract (including the benefit of any power of attorney, proxy or guarantee) without the Buyer's consent. Upon receipt by the Buyer from or on behalf of the Seller of notice of such transfer or assignment the Buyer acknowledges and agrees that the terms and conditions of this Contract and any guarantee of the Buyer's obligations hereunder shall remain binding upon the Buyer and/or Guarantors and shall be enforceable against the Buyer and/or Guarantors by the transferee or assignee of the Seller's interest as if the transferee or assignee were the Seller named herein. If required by the Seller, the Buyer and/or the Guarantors shall execute a Deed of Covenant in favour of the transferee or assignee of the Seller containing such terms and conditions reasonably required by the Seller to give effect to the terms hereof. The Buyer irrevocably appoints the transferee or assignee of the Seller's interest to be its attorney on the same terms and conditions as contained in Clause 20. The Buyer agrees that its deposit paid or Bank Guarantee provided under this Contract shall pass with such transfer or assignment.
- 33.2 The Buyer shall not assign its interest under this Contract.

34. FINANCE

- 34.1 If Item S is completed then:

34.1.1 This Contract is subject to the Buyer obtaining from the Financier named in Item S on or before the approval date specified in Item S approval of a loan of not less than the amount of loan specified in Item S on terms satisfactory to the Buyer and if the Buyer does not obtain such approval for any reason not being attributable to the Buyer's own default the Buyer may terminate this Contract by notice in writing to the Solicitors for the Seller, to be given no later than 5.00pm on the approval date in which event all deposit and other moneys paid by the Buyer (except as provided by Clause 4.1.1.5) shall be refunded to the Buyer.

- 34.2 The Buyer shall take all steps reasonably necessary to obtain such approval.
- 34.3 The Buyer may waive the benefit of this condition by giving notice in writing to the Solicitors for the Seller not later than 5.00pm on the approval date.
- 34.4 If the Buyer obtains such approval the Buyer shall give notice in writing of such approval to the Seller immediately and in any event, not later than 5.00pm on the approval date.
- 34.5 If the Buyer does not terminate this Contract pursuant to subclause 34.1 of this clause, does not waive the benefit of this condition pursuant to subclause 34.3 of this clause and does not give notice pursuant to subclause 34.4 of this clause, then the Buyer shall be deemed to have waived the benefit of this clause and this clause shall be deemed to have been satisfied and the Contract shall no longer be subject to this clause.

35. OTHER MATTERS

35.1 Easements

- 35.1.1 The Land (Common Property) may have the benefit of or be encumbered by any and all easements disclosed, contemplated and/or anticipated by the provisions of this Contract including those which the Seller shall, in its absolute discretion, deem to be appropriate and expedient to comply with the requirements of any authorities of competent jurisdiction.

35.1.2 The Buyer will accept title to the Lot and the Common Property having the benefit of or being encumbered by any such easements and their terms and conditions and will not be entitled to make, take nor claim any objection to or damages, compensation, or an equivalent nor have any right whatsoever to not complete this Contract by virtue of the existence or the granting of any such easements.

35.2 Design

35.2.1 The design configuration and layout of the building and, in particular, the number, size and configuration of the lots and the areas of common property to be the subject of grants of exclusive use or occupational authorities are still being finalised by the Seller and the Seller reserves to itself the right, at its absolute discretion, to finalise the design, configuration and layout of the building.

35.2.2 The Buyer will not object to nor have a right to claim damages, compensation or an equivalent nor be entitled to not complete this Contract by reason of the final design, configuration and layout of the building.

35.3 Electrical Safety Switch and Smoke Alarm

35.3.1 The proposed lot will be constructed with compliant safety switches installed.

35.3.2 The proposed lot will be constructed with compliant smoke alarms installed.

35.4 Access

Following registration of the Subdivision Plan and after reasonable notice to the Seller, the Buyer or its consultants (as the case requires) may enter the Lot before the date of completion by prior appointment made with the Seller or the Agent:

- (1) once to inspect the Lot
- (2) once to value the Lot.

35.5 Disclosure Statement

35.5.1 The Disclosure Statement forms part of this Contract. Words therein used that are defined in this Contract have the same meaning unless the context otherwise requires.

35.5.2 The Buyer acknowledges that the "First Statement" within the meaning of s213 of the Act comprises so much of the contents of the Disclosure Statement as are necessary to constitute that statement only and not the entire contents of the Disclosure Statement.

35.5.3 The Seller and the Buyer agree that the fourteen (14) day period for further disclosure referred to in s214(2) of the Act is extended to the period ending on the day on which the Seller or its Solicitors give notice to the Buyer or its Solicitors that the Subdivision Plan has been registered under clause 5.1.

35.5.4 The Buyer acknowledges receiving the Disclosure Statement signed by or on behalf of the Seller before the Buyer entered into this Contract.

35.6 Trust Provisions Relevant to Buyer

35.6.1 The Buyer warrants to the Seller that the Buyer is not buying the Lot as trustee of an undisclosed trust.

35.6.2 If the Buyer is buying the Lot as trustee of a trust, the Buyer warrants that:

35.6.2.1 the Buyer is the sole trustee/s of the trust;

35.6.2.2 the Buyer has the power to enter into this Contract;

- 35.6.2.3 the Buyer has done everything necessary to ensure that the Buyer is entitled to indemnity from the trust against liability under this contract and the Buyer will not do anything to prejudice this right of indemnity.
 - 35.6.2.4 the Buyer will give the Seller copies of all relevant trust documentation if requested; and
 - 35.6.2.5 the Buyer will not allow a variation of the trust or any re-settlement or advance or distribution of capital before completion of this Contract.
- 35.6.3 If the Buyer is buying the Lot as trustee then the Buyer is bound both personally and in its capacity as trustee.

35.7 Governing Law

This Contract is governed by the laws of Queensland.

36. SPECIAL CONDITIONS

The Seller hereby warrants to allocate car park space/s No/s as depicted on Level being the Plans contained in this Contract of Sale.

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FIRST SCHEDULE

The Plans

The Buyer acknowledges the floor plans contained in this Schedule are draft plans only. These floor plans may vary in accordance with the terms of the Contract. In addition, the Buyer acknowledges that any loose items depicted on the floor plans are not included in the property being sold by the Seller to the Buyer and for indicative purposes only and are not shown to scale.

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SECOND SCHEDULE

Director's Guarantee

NOTE: Where the Buyer is a company, the undermentioned guarantee must be executed by all the directors of the company.

I/We

and

of (collectively "the Guarantor")

(if these details are not provided, then, it is agreed by the Buyer that the details of the directors of the company as recorded with ASIC will be the guarantors to this Contract).

being the director/s of the Buyer, in consideration of the Seller having at the request of the guarantor which request is testified to by the guarantors' signatures to the Contract, agreed to sell the lot to the Buyer covenant and agree as follows:

- (a) The guarantor/s guarantee/s to the Seller the prompt performance of all of the obligations of the Buyer contained or implied in this Contract. If the obligation is to pay money, the Seller may recover the money from the guarantor as a liquidated debt.
- (b) In addition to my/our liability under the preceding paragraph, the guarantor indemnifies the Seller against loss incurred by the Seller because the Buyer does not discharge and comply with all of its obligations under this Contract.
- (c) The guarantor's liability under this guarantee is not affected by:
 - (i) the granting of time, forbearance or other concession by the Seller to the Buyer or any of the guarantor;
 - (ii) an absolute or partial release of the Buyer or any of the guarantor or a compromise with the Buyer or any of the guarantor;
 - (iii) a variation of this Contract;
 - (iv) the termination of this Contract;
 - (v) the fact that this contract is wholly or partially void, voidable or unenforceable;
 - (vi) the non-execution of this Contract by one or more of the persons named as guarantor or the unenforceability of the guarantee or the indemnity against one or more of the guarantor; or
 - (vii) the exercise or purported exercise by the Seller of its rights under this Contract.
- (d) The guarantor's liability is not discharged by a payment to the Seller which is later voided by law. If that happens, the Seller, the Buyer and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.
- (e) If a liquidator or trustee in bankruptcy disclaims this Contract, the guarantor indemnifies the Seller against any resulting loss.
- (f) Until the Seller has received all money payable to it by the Buyer:
 - (i) the guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; and
 - (ii) the guarantor must hold any claim it has and any dividend it receives on trust for the Seller.
- (g) Where there is more than one guarantor, the guarantors agree their obligations under this guarantee is both joint and several.
- (h) If the Seller assigns its rights under this Contract, the benefit of the guarantee and indemnity in this clause extends to the assignee and continues concurrently for the benefit of the Seller regardless of the assignment unless the Seller releases the guarantor in writing.

(THE EXECUTION OF THIS CONTRACT BY THE GUARANTORS SHALL CONSTITUTE THE EXECUTION OF THIS DIRECTORS' GUARANTEE BY THE GUARANTORS).

THIRD SCHEDULE

**DEED APPOINTING ATTORNEY
(Clause 20.6)**

THIS DEED is made on the _____ day of _____ 20

BY: _____ ("the new Owner")

IN FAVOUR OF AND FOR THE BENEFIT AND ADVANTAGE OF: RESEMBLE PTY LIMITED ACN 056 995 021 (ATF The Maroochydore Commercial Unit Trust) ABN 36 729 051 627 of care of Swanston & Associates, Suite 6, "Boulevard Centre, 68 Jessica Boulevard, Minyama, Queensland

BACKGROUND:

- A. The Original Owner purchased the Lot as described in the Contract between the Original Seller and the Original Owner.
- B. It is a term of the Contract of Sale between the Original Seller and Original Owner ("the Contract") that the New Owner enters into this Deed.

THE PARTIES AGREE as follows:

1. **Definitions and Interpretations**

In this Deed, unless inconsistent with the context or subject matter:

- 1.1 "Body Corporate" means the Body Corporate for "....." Community Title Scheme.
- 1.2 "Subdivision Plan" means the building format plan registered in respect of "....." which creates the Lot.
- 1.3 "Committee" means the committee of the Body Corporate.
- 1.4 "Expiry Date" means the date which is one year from the date the Scheme is established.
- 1.5 "Scheme" means "....." Community Titles Scheme No.
- 1.6 "Buyer" means the New Owner.
- 1.7 "Seller" means the original Seller.

2. **Power of Attorney**

- 2.1 The Buyer irrevocably appoints the Seller and, if the Seller is a company, each director and secretary of the Seller, and their substitutes, jointly and severally, to be attorney of the Buyer for the following purposes:-
 - 2.1.1 to attend and/or vote in the name of the Buyer at all or any meetings of the Body Corporate or of the Committee of the Body Corporate to the exclusion of the Buyer if present at any such meeting whereat the Seller requires such exclusion; or
 - 2.1.2 to complete, sign and lodge any voting paper (or any other document including a proxy form and a Notice under the Regulation Module applying to the Scheme) to allow the Seller to vote in the name of the Buyer at all or any meetings of the Body Corporate or of the Committee of the Body Corporate to the exclusion of the Buyer in respect of any motion or resolution for or relating to any one or more of the following:-
 - 2.1.2.1 any new Community Management Statements to be recorded to facilitate the development identified in the Community Management Statement or any variation thereof from time to time as determined by the Seller under the provisions of this Contract, which development or variation necessitates the lodgement of new Community Management Statements so as to effect the Development or variations.

- 2.1.2.2 the granting or issuing of a Common Property Authority to a service contractor or letting agent under the Regulation Module applying to the Scheme;
- 2.1.2.3 the issue of a continuing contravention notice under the Act or the issue of a future contravention notice under the Act;
- 2.1.2.4 the issue of any information request notices under the Act;
- 2.1.2.5 an application being made for an order of an adjudicator under the Act;
- 2.1.2.6 an appeal to be lodged under the Act;
- 2.1.2.7 the commencement of a proceeding under the Act;
- 2.1.2.8 the adoption of administrative and sinking fund budgets for the Body Corporate;
- 2.1.2.9 any proposal involving spending above the limit for Committee spending;
- 2.1.2.10 any proposal by the Body Corporate to take any of the actions or steps permitted under the Regulation Module proposed to apply to the Scheme;
- 2.1.2.11 to complete, sign and lodge any written consent under the Act or under any section of the Regulation Module proposed to apply to the Scheme, as may be required to facilitate and perfect an allocational grant under any of the exclusive use by-laws contained in the Community Management Statement;
- 2.1.2.12 any matter or thing the Seller, in its absolute discretion, deems necessary and expedient to do to enable The Development to be constructed to its final state notwithstanding that completion of the Contract has been effected;
- 2.1.2.13 to grant rights of exclusive use of part or parts of the common property to Buyers of other lots in the building for such purposes as the Seller in its absolute discretion deems appropriate;
- 2.1.2.14 the imposition of any levies (including for the payment of insurance);
- 2.1.2.15 the negotiation and execution of any easements to or from any person or entity;
- 2.1.2.16 the negotiation and execution of any agreements or documents in respect of a proposed grant of a table licence(s)/outdoor dining permit(s) with the Local Authority or other government or similar government department;
- 2.1.2.17 the negotiation and execution of any documents amending any service contract;
- 2.1.2.18 the negotiation for and the granting or amending of any exclusive use including basement layout, car parking, storage, outdoor dining facilities and any other facilities the Seller deems necessary and expedient;
- 2.1.2.19 the negotiation and execution or modification of any agreement to asset in the trading of and to facilitate the efficient operation of the lots (if any) within the Scheme Improvements.
- 2.1.2.20 to cause the Body Corporate to grant rights of exclusive use and enjoyment to buyers of other lots in the building in respect of any common property (other than any grant of exclusive use to the Buyer in this Contract) including any car spaces or areas of exclusive use on any part or parts of the common property or to grant an easement over common property;
- 2.1.2.21 to sell for a nominal consideration or such other consideration as the Seller, in its absolute discretion, deems appropriate any part of the common property and facilitate its amalgamation with any lot(s) or creation of any additional lot(s) from the same.
- 2.1.2.22 to do any matter or thing and to pass any motion/s or resolution/s as may become necessary and/or expedient to facilitate any matter or thing the Seller determines should be done under paragraphs 20.1.2.21 of this Power of Attorney.
- 2.1.2.23 to do, sign, execute and deliver any matter or thing and to pass any motion(s) or resolution(s) as may become necessary and/or expedient to facilitate and give effect to any matters anticipated by any "additional car parks" clause of this Contract.
- 2.1.2.24 to do, sign, execute and deliver any matter or thing and to pass any motion(s) or resolution(s) as may become necessary and/or expedient

to facilitate and give effect to any matter or thing as the Seller or any of the relevant Authorities determine, require, direct or order should be done to facilitate or give effect to any of the matters anticipated by this clause 20 or by any other provision of this Contract.

- 2.2 For the purposes of paragraph 2.1.2.12 The Development shall mean and include:
 - 2.2.1 All of the construction and other works necessary and expedient and as would ordinarily and reasonably be anticipated as being usually associated with a development of the nature, size and design of the Development being ".....", comprising without limitation:
 - 2.2.1.1 The Commercial component ("the Lots"); and
 - 2.2.1.2 The Common Property facilities component ("the Common Property"); and
 - 2.2.2 Such variations, amendments and alterations to the Plans as the Seller determines appropriate and which the Seller is permitted to do under the provisions of this Contract.
- 2.3 This clause is effective as a Deed.
- 2.4 The Buyer will at all times and as and when requested by the Seller ratify and confirm all and anything done by the Seller under this Clause.
- 2.5 The Power of Attorney in this clause remains in full force and effect for a period of one year from the date the Scheme is established.
- 3. While this Power of Attorney remains in force the Buyer must not transfer the Lot except to a person who has first signed a Deed in the same form as this Deed and have delivered it to the Seller. If the Buyer does not comply with this provision the Buyer indemnifies the Seller against all loss and damage incurred by the Seller as a result.

IN WITNESS the new Owner has signed and delivered this Deed.

SIGNED SEALED AND DELIVERED by the New Owner)

.....
in the presence of:)

.....
Witness

THE COMMON SEAL of the New Owner was affixed)

.....
in the presence of:)

Director

.....
Director/Secretary

.....
Witness

SIGNED SEALED AND DELIVERED for and on behalf)

.....
of the New Owner by its Attorney/s under Registered)
Power of Attorney No..... in the presence of:)

Attorney

.....
Attorney

.....
Witness

IN WITNESS WHEREOF this Contract has been executed by the parties on the day, month and year shown in Item A hereof.

EXECUTED BY RESEMBLE PTY LIMITED)
ACN 056 995 021 (ATF THE)
MAROOCHYDORE COMMERCIAL UNIT)
TRUST ABN 36 729 051 627) in accordance)
with s127(2) of the Corporations Law as)
SELLER in the presence of:)

.....
(Solicitor/A Justice of the Peace/Commissioner for Declarations)

* Affix the Common Seal and witness the fixing of the Seal

SIGNED BY)
the BUYER in the presence of:)

.....
Witness

EXECUTED BY)
ACN in accordance with)
s127(2) of the Corporations Law as BUYER)
in the presence of:)

.....
(Solicitor/A Justice of the Peace/Commissioner for Declarations)

* Affix the Common Seal and witness the fixing of the Seal

If signed by a Company its Directors must sign this Contract in acknowledgement of the Directors' Agreement to be bound by the Directors' Guarantee as detailed in the Fourth Schedule

SIGNED by the Guarantor)
in the presence of:) Guarantor

.....
Witness

SIGNED by the Guarantor

in the presence of:

)
) Guarantor
)

.....
Witness

Contract of Sale/Second

DRAFT