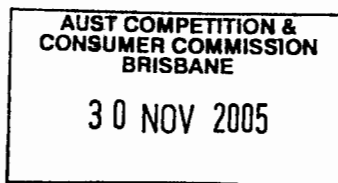


Deacons



Level 17
175 Eagle Street
Brisbane Qld 4000
Australia
GPO Box 407
Brisbane Qld 4001
DX114 Brisbane
Tel +61 (0)7 3309 0888
Fax +61 (0)7 3309 0999
www.deacons.com.au

29 November 2005

By Hand

FILE No:
DOC:
MARS/PRISM:

ACCC
Level 3
AAMI Building
500 Queen Street
BRISBANE QLD 4000

Other Offices
Canberra
Melbourne
Perth
Sydney

**Independent
Affiliated Firms**
Hong Kong
Indonesia
Malaysia
People's Republic of China
Singapore
Taiwan
Thailand
Vietnam

Attention: Adjudication Notification Area

Our Ref: 2581325

Dear Sir/Madam

**Australian Affordable Housing Association Inc
From G Notification Exclusive Dealing**

Please find **enclosed** Form G Notification of Exclusive Dealing for Australian Affordable Housing Association Inc.

We **enclose** a cheque for \$1,000 for payment of lodgement fees.

Yours faithfully

Phillip Hourigan
Partner
Deacons
Direct line: +61 (0)7 3309 0865
Email: phillip.hourigan@deacons.com.au

D05/72821
N50176

Regulation 9

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING

NOTIFICATION

To the Australian Competition & Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7) or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) Name of person giving notice Australian Affordable Housing Association Inc
(See Direction 2 below)
- (b) Short description of business carried on by that person
Affordable housing, property development
- (c) Address in Australia for service of documents on that person
C/- Geoff Jamieson, Australian Affordable Housing Association Inc
Level 1, 32 Logan Road, Woolloongabba, Queensland 4102 (PO Box 1522,
Brisbane City East, Qld 4002)
2. (a) Description of the goods or services in relation to the supply or acquisition
of which this notice relates
Land contracts for the sale of residential allotments
- (b) Description of the conduct or proposed conduct
Refer to Annexure A
- (See Direction 4 below)
3. (a) Class or classes of persons to which the conduct relates
Purchase of residential allotments
- (b) Number of those persons -
 - (i) At present time - See Annexure B
 - (ii) Estimated within the next year

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and address - See Annexure B

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Mr Geoff Jamieson, Level 1, 32 Logan Road, Woolloongabba, Queensland 4102 (PO Box 1522, Brisbane City East, Qld 4002)

Dated 27/11/2005

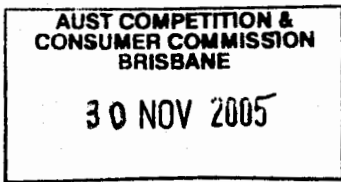
Signed by/on behalf of the applicant

(Signature)



(Full name)

(Description)





Annexure A

1. Australian Property Systems Limited (ACN 096 925 610) ("APSL") owns a patented property development system for use with strata title development. It has considerable experience in planning and managing large scale, complex developments.
2. APSL has granted a licence to commercialise the patented system to Napier Blakeley Consulting Pty Ltd. Napier Blakeley Consulting Pty Ltd is implementing the patented system under licence in respect of a project where the landowner is Australian Affordable Housing Inc.
3. The conduct which is the subject of this Notification is a system for property development where areas above and below land are sub-divided into strata-titled or volumetrically defined lots for sale to purchasers in accordance with relevant titling legislation and development approvals obtained from the applicable consent or assessing authority. Each purchaser is required to sign agreements for the purchase of their lot and for the undertaking of building works in or on the lot. When completed the lots will form part of a strata titled development constructed by a selected Builder. The Body Corporate (or equivalent representative body) established when titles to the lots are created, also enters into a construction contract with the Builder for the construction of common amenities and structures.
4. The system is as follows:
 - (1) Napier Blakeley Pty Ltd as the development manager (using the APSL patented development system) arranges on behalf of Australian Affordable Housing Inc as the landowner, for the titling of the development site into distinct stratum or volumetric lots that will form separate units in a strata title development to be constructed by the Builder ("**Building Concept**").
 - (2) The purchaser buys a lot under a Contract of Sale on the condition that the purchaser also executes various Development Documents necessary for the construction of the Building Concept as developed by the development manager. The relevant provisions of the Contract of Sale are included in **Attachment 1**.
 - (3) The development manager, the landowner and the Builder enter into a Project Co-ordination Deed that establishes the parameters for the Builder's involvement in the construction process and under which the Builder commits to the terms of construction arrangements with the individual lot purchasers and the Body Corporate (or equivalent representative body) defining the duties of each party in relation to development of the Building Concept. Those arrangements are then reflected in individual construction contracts and construction covenants with each purchaser. The Builder commits to fixed price construction arrangements with each purchaser and also agrees to give the development manager certain rights in respect of monitoring the builder's performance (including the ability to replace a defaulting builder) which the development manager then agrees to exercise for the benefit of purchasers. The Builder also agrees to provide a range of securities for the performance of the Building Works. The relevant provisions of the Project Co-ordination Deed are included in **Attachment 2**.

-
- (4) The purchaser signs a Construction Contract with the Builder and a Construction Covenant with the Builder, original landowner and development manager for the construction of the purchaser's unit, forming part of the overall Building Concept. The relevant provisions of the Construction Contract and Construction Covenant are included in **Attachment 3** and **Attachment 4** respectively.
 - (5) The Builder signs a Construction Lease with the purchaser for uninterrupted use of the purchaser's lot for the purposes of completing the strata title development. The relevant provisions of the Construction Lease are included in **Attachment 5**.
 - (6) The Builder also signs a construction contract or construction lease (incorporating the construction contract) with the body corporate (or equivalent representative body) for the construction of common amenities works for the Building Concept. The Body Corporate engages the development manager to act on its behalf in monitoring the Builder's performance.
5. Due to the nature of strata title developments, there is a distinct public benefit in requiring a single builder be used to construct the units within the building. The various units will be sharing walls and floors and the external structure of the building.
 6. It would be extremely impractical and potentially unsafe to allow different builders to construct each of the various units within a single building. The only possible way to deliver the financial benefits purchasers want to achieve through the use of the APSL development system, and to ensure the building is quickly, safely and efficiently constructed, is to have each of the purchasers use the same builder.
 7. Construction of a residential strata title building also has a public benefit in that it provides housing for the community. The nature of the development system applied results in better building compliance and development inclusions. This occurs because the financial impost of development construction is borne by a single funding source – the purchasers and their financiers – as opposed to being funded twice (once by a development financier and then by purchasers or their financiers again). In turn this allows for the inclusion of better quality finishes and fittings and building infrastructure at the same market price that would be paid for a unit developed in a traditional manner. There are also significant costs savings for the development which impacts on housing affordability, which is also an important public benefit.
 8. The lots and their associated (constructed) units are marketed and sold as single products. This is demonstrated by the following:
 - (1) the units are part of the same building, with a set design, and buyers of the lots are essentially purchasing units in the building to be constructed by the Builder;
 - (2) the design of the building is determined in advance by a Project Control Group which includes the landowner, the development manager and the Builder;
 - (3) the Builder guarantees a maximum price for the construction of the entire building and the benefits of this pricing are passed on to purchasers (under their individual construction contracts); and
-

-
- (4) the lots and completed units are marketed in advertising and other material as a single product.
9. It is submitted that since the lots and their associated completed units in the tower are single products, the exclusive dealing provisions of the *Trade Practices Act 1974* do not apply to the proposed system.
10. In the alternative, it is submitted that the public benefit of constructing residential strata title developments outweighs the detriment (if any) of the proposed system. Those benefits include:
- (1) The acceptance by the Builder of direct representation for each purchaser and the monitoring of the builder's performance by the development manager as the purchasers' and body corporate's (or equivalent entity) representative. Normally no one acts for the buyers in monitoring the performance of construction works by a builder for the benefit of the end users of that building. Funds are set aside in a trust account to meet the costs of the development manager's representation of the purchasers (who do not pay this fee directly themselves) and if the development manager defaults, or is otherwise replaced, that fund remains for the benefit of the body corporate (or equivalent representative entity) to allow a replacement to be engaged at no additional cost to the purchasers.
 - (2) The Builder providing substantial security for the cost of performing the building works, and the cost of its replacement in the event that the Builder defaults. Normally the Purchasers (end users) of product in a development sold off the plan have no direct contractual right against the Builder or benefit of any direct contractual warranties as to design of the building (for defect liability) or performance of the construction works. The level of this security is significant – it can be up to 25% of the total construction cost depending on the nature and extent of the works required to be undertaken.
 - (3) Provision by the Builder of defects security in the form of cash retentions or unconditional bond or guarantee - normally buyers in off the plan developments have no recourse to any form of security for this obligation and are forced to rely on promises made by the developer to cause defects to be rectified.
 - (4) An extended defects period of 12 months – normally purchasers have a limited period (usually 90 days or less) in which to give notice of defects failing which they have no contractual right against a developer to compel rectification.
 - (5) Under the arrangements to which the Builder commits, it agrees that it must fully cost and price for all conditions and eventualities within a cost plan which identifies any relevant contingencies and nominates a component of the total construction price as a Contingency Fund. That Fund is constituted by retentions from Building Works payments and held in a solicitors trust account pending the occurrence of the relevant contingencies or the completion of the works. The Builder agrees that any unexpended part of the Contingency Fund may be applied for the benefit of the Purchasers as directed by their representative – the development manager. In this way the purchasers
-

receive the benefit of any amounts within construction pricing that are not directly applied to the undertaking of the works by the Builder. In a traditional system the Builder would retain any of these amounts or share in savings with the developer to the exclusion of the end users (buyers) of the product.

- (6) The Purchaser's share in the return on the project. In a traditional development the developer receives all the return and is encouraged by the risk profile to maximise that return at the expense of other project participants (by cutting costs and margins). In this system, on settlement of the transfer of titles to lots, the purchasers receive a share of the project return. This is received before commencement of construction works and can be used as the purchasers see fit (and direct). Receipt of the entitlement is dependent on the lot transfer settling before construction works are commenced and on the premise that titles can be created in the relevant jurisdiction prior to completion of construction of the Building Concept. In general terms, once the land titling and transfer component of the development process is completed the remaining cost in the project is the construction cost. Accordingly, the purchasers entitlement when received by them represents a participation in the return of the project and is not a rebate against an inflated end purchase price (as is often the case in a traditionally marketed and constructed development). The original landowner and project consultants also receive a payment from that return (as project costs paid for services).
- (7) Consent and assessing authorities and purchasers benefit from development under this system because:
- (a) The financial and risk profiles are altered to allow the inclusion of better quality and built infrastructure in projects than would normally be the case without comparative price increases in end product in the market.
 - (b) The process of construction is far more intensively managed and supervised than in an ordinary development system. Works are scrutinised throughout construction and multiple compliance checks are accepted as integral to the process as required by the relevant authority over and above what would normally be required in the construction phase. Although private certification is used for building works, this system allows for an additional overlay of compliance supervision by the authorities that ensures that any defective works are picked up early and at a time when they can be rectified (as opposed to being identified after completion with potentially catastrophic results where the defects are not then capable of being remedied or to do so will prove prohibitively expensive and end users will then be asked to carry that burden).
 - (c) Many sites that could not otherwise be developed because of cost constraints (contaminated sites for example) can be redeveloped for a better development use under this system because the more equitable allocation of risk and removal of funding duplication allows for a greater range of development opportunities.



Attachment 1 – Contract of Sale

STOP

IMPORTANT NOTE TO USER

WARNING

The document **MUST** be bound in the following order:

- the PAMD form 30c at the TOP,
- followed by the Contract Warning under the BCCMA,
- and then the Contract.

The document is bound with a clear plastic front cover and the standard Deacons back cover.

No title page or other page can cover the form 30c.

Insert PAMDA 30c here



Queensland Government

Department of Tourism, Fair Trading and
Wine Industry Development

Form: BCCM 14 Version 5

Body Corporate and Community Management Act 1997. S.206, 213

Commencement date: 26 April 2004

In your interests the Queensland Government issues you with the following –

CONTRACT WARNING

Read this information sheet before signing the contract

By law, the Vendor of a lot in a community titles scheme must bring this information sheet to your notice as the first page of a contract of sale. The purpose of this information sheet is to assist you in making your purchase decision by –

1. suggesting matters which you should investigate about the lot you are interested in buying before committing yourself; and
2. briefly explaining the rights and responsibilities of ownership of a lot in a community titles scheme.

The Vendor must also provide you with a statement under section 206 (for an existing lot) or 213 (for a proposed lot) of the *Body Corporate and Community Management Act 1997* setting out certain basic details about the scheme. This may form part of the information supplied in the contract. This must also be provided to you before you sign the contract.

The Act states that unless these two requirements are met, you may cancel the contract.

The information set out in this document is given to assist Purchasers only and is not intended to be an exhaustive list of matters that may effect every person.

SUGGESTED MATTERS FOR EXAMINATION.

Apart from carrying out the normal conveyancing searches for any purchase of real property (land), it is recommended that you take the following additional steps –

- Obtain a "Body Corporate Information Certificate" from the Body Corporate Secretary, or Body Corporate Manager, whose name and address is supplied in the section 206 (existing lot) or 213 (proposed lot) Statement referred to previously.
- Conduct a search at the Office of the Commissioner for Body Corporate and Community Management, Department of Tourism, Fair Trading and Wine Industry Development for any Adjudicator's Orders made concerning the scheme.
- Obtain a copy of the Community Management Statement for the scheme from the nearest land registry office of the Department of Natural Resources, Mines and Energy.
- Conduct a search of the records of the body corporate to –
 - ◆ Verify the information given in the section 206 (existing lot) or 213 (proposed lot) Statement (inaccurate information gives you certain rights under section 209 or 217 of the *Act* respectively).
 - ◆ Verify that there has been no breach of the implied warranties given to you under Part 3 of Chapter 5 of the Act (a breach gives you certain rights to terminate the contract or to claim compensation).
 - ◆ Obtain information on the following suggested matters, or on any other matters you consider relevant.
(There are professional Search Agents who can conduct the search of the records of the body corporate for you.)

Community Management Statement. This document is unique to each scheme. It describes the scheme and any proposed future development of the scheme. It contains the Interest Schedule, Contribution Schedule and the By-laws.

Contributions to body corporate funds. Owners must regularly contribute money to the body corporate to meet the cost of, (amongst other things), maintaining the common property lawn, security lighting and public liability insurance. Budgets are agreed by owners at each annual general meeting of the body corporate. The amount each owner must contribute as their share of the total budget, is in proportion to the value of each owner's lot entitlement set out in the Contribution Schedule.

This schedule is contained in the Community Management Statement. It is important that you look at both the entitlement value of the lot you are purchasing and that of the other lots so you can compare any differences in owners' contributions.

There is also an Interest Schedule showing separate lot entitlements, which determines, amongst other things, the Local Government rates payable by each owner.

By-laws. The by-laws of the body corporate are set out in its Community Management Statement. They generally regulate what an occupier can and cannot do within the scheme. A common by-law, for example, prohibits the keeping of a pet animal without the prior permission of the body corporate.

Additions or alterations to lots. You should find out whether any improvements have been made to the lot (eg window awning, balcony enclosure) or installed (eg air-conditioner), if they have been authorised by the body corporate where necessary, whether any conditions apply and who is responsible for their maintenance, operation and insurance.

Service agreements. A body corporate may have short or longer term agreements for caretaking, body corporate management, letting, lift maintenance or other services. You will be contributing to the payments under these agreements in your proportional contributions.

Regulation Module. A scheme will come under one of 4 different sets of regulation modules under the *Body Corporate and Community Management Act 1997* – Standard (intended for residential schemes), Accommodation (for investment letting), Commercial (for business) or Small Schemes (for six lots and less). The Community Management Statement will show the Regulation Module for the scheme. Standard Module schemes are substantially regulated while the others are largely deregulated. Accommodation Module schemes are largely not suitable for permanent residential living.

General. A search of the records of a body corporate can also reveal other items of interest, for example, the adequacy of insurance policies, a legal action in progress, impending major repairs to the common property.

GENERAL INFORMATION

What is a community titles scheme?

- "Community Titles Scheme" is a general description for a high-rise building of individual units (a building format plan) or a complex of individual or joined townhouses (usually a standard format plan). Both types of property are called "lots" in the government legislation which regulates Community Titles Schemes, the *Body Corporate and Community Management Act 1997*.
- In all community title schemes there is some portion of land or part of the building, which is "common property".
- The common property is owned jointly by all owners. The "body corporate" comprises all of the owners and it makes decisions about the common property and other matters by holding formal meetings.

Who runs the body corporate?

- The owners do by voting on proposals at body corporate meetings. The elected Committee of the body corporate has limited powers to make decisions for day-to-day administrative matters. Owners can be active in their body corporate by nominating for Committee or by submitting written motions to be discussed and voted on at the next meeting.
- The body corporate can decide to employ a Body Corporate Manager to assist it in carrying out its secretarial and treasurer functions.

What help is available to owners?

- The Department of Tourism, Fair Trading and Wine Industry Development has a Freecall telephone "Community Titles Advisory Service" to answer queries by owners on community title scheme matters. Owners use this service for advice on such matters as – determining responsibility for repairs; how to conduct a Committee election; what type of resolution is necessary in a particular situation; how to enforce a by-law, etc. You may contact this service by telephoning **1800 060 119**.
- The Department also offers a dispute resolution service for settling disputes between owners, and between owners and their body corporate. There are a variety of means available for resolving disputes, including mediation, formal order or specialist assessment. For information on this service telephone the Office of the Commissioner for Body Corporate and Community Management, Department of Tourism, Fair Trading and Wine Industry Development. Phone (07) 3227 7654 or (07) 3227 7899.

Copies of the *Body Corporate and Community Management Act 1997* and the *Body Corporate and Community Management (Standard Module) Regulation 1997*, (or the *(Accommodation Module)*, *(Small Schemes Module)* or *(Commercial Module)* as appropriate to your needs), may be purchased from the Government Printing Office (Goprint).

**Ferry Road
Community Titles Scheme
Land Contract**

Date made

2005

REFERENCE SCHEDULE

Item 1

Agent

Peter Jacobsen

Facsimile:

Item 2

Vendor

Australian Affordable Housing Association Inc.
of Level 1, 32 Logan Road, Woolloongabba, Queensland, 4102

Item 3

Vendor's Solicitor

Deacons
of Level 17, 175 Eagle Street, Brisbane Queensland

Telephone: 07 3309 0888

Facsimile: 07 3309 0999

Item 4

Purchaser

«F24» «F25» «F26»

«F28» «F29» «F30»

of «F33»

Item 5

Purchaser's Solicitor

«F34»

of «F35»

Telephone: «F36»

Facsimile: «F37»

Item 6

Guarantor

«F41»

of «F42»

«F43»

of «F44»

[NOTE: The directors or principal shareholders of any corporate Purchaser must provide a guarantee under clause 42]

Item 7 **Lot**

Proposed Lot «F77» on the Plan

Item 8 **Purchase Price**

\$«F67»

Item 9 **Deposit**

\$«F68» payable on signing

Item 10 **Deposit Holder**

Deacons

Item 11 **Foreign Investment**

Is the Purchaser a foreign person? Yes / No [Delete one]

Item 12 **Building Site**

«F60»

Item 13 **Precommitment Date**

«F89»

Item 14 **Builder**

«F45»

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 In this Contract:

- (1) **"AAHA"** means Australian Affordable Housing Association Inc.
- (2) **"Amenities"** means:
 - (a) the Common Property ; and
 - (b) Service Infrastructure in a lot in the Building which provides Services to more than 1 lot or lots and Common Property;
- (3) **"Amenities Works"** means the works necessary for the construction and installation of Amenities in accordance with the Building Concept;
- (4) **"APSL"** means Australian Property Systems Limited ACN 096 925 610;
- (5) **"BCCMA"** means the *Body Corporate and Community Management Act 1997*;
- (6) **"Balance Purchase Price"** means the Purchase Price:
 - (a) less the amount paid as Deposit; and
 - (b) adjusted under clause 6;
- (7) **"Bank Guarantee"** means a bank guarantee, deposit bond or similar unconditional security that is:
 - (a) from a bank or other financial institution acceptable to the Vendor and any financier to the Vendor;
 - (b) in a form acceptable to the Vendor;
 - (c) for an amount equal to the Deposit;
- (d) in favour of the Vendor or the Deposit Holder (where the form of Bank Guarantee allows for nomination of a beneficiary); and
- (e) to be held by the Vendor's lawyer;
- (8) **"Body Corporate"** means the body corporate established for the Scheme;
- (9) **"Body Corporate Construction Lease"** means a lease of Common Property between the Body Corporate and the Builder and which also provides for arrangements between the Builder and the Body Corporate for undertaking the Amenities Works generally in the form in Annexure C;
- (10) **"Body Corporate Levies"** means levies payable under the BCCMA to the Body Corporate and the amounts referred to in clause 6.4;
- (11) **"Body Corporate Manager's Agreement"** means the engagement of a Body Corporate Manager for the Scheme by the Body Corporate;
- (12) **"Builder"** means the builder named in Item 14 of the Reference Schedule;
- (13) **"Building"** means the building that will contain or form part of the Lot when constructed on the Building Site together with Service Infrastructure and Amenities;
- (14) **"Building Concept"** means the concept for the development of the Building Site (including design and erection of the Building) and establishment of the Scheme and includes the provisions of:
 - (a) the Design Documents including those prepared by the Builder;
 - (b) the Development Approvals;

- (c) the Building Works Program and Fixed Price Cost Plan provided by the Builder; and
- (d) architectural or draft survey plans prepared for Land Contracts; and
- (e) all documents and matters referred to or endorsed on any of the documents in clauses 1.1(14)(a) to 1.1(14)(d);
- (15) **"Building Works"** means all works, including the Amenities Works and the Purchaser's Building Works, under Fixed Price Construction Contracts for the construction of the Building in accordance with the Building Concept and the Development Documents;
- (16) **"Building Works Program"** means the program to be provided by the Builder for the entire undertaking of the Building Works under Fixed Price Construction Contracts and includes any specific Building Works program for the Purchaser's Fixed Price Construction Contract;
- (17) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (18) **"Call Option"** means the option to purchase in the form in Annexure D given in favour of the Vendor, and referred to in clause 38;
- (19) **"Completion"** means the performance on the Completion Date of the parties' Obligations under this Contract;
- (20) **"Completion Date"** means the date calculated under clause 7.1 on which the Price must be paid;
- (21) **"Completion Preconditions"** means the preconditions to Completion under this Contract referred to in clause 13;
- (22) **"Construction Auditor"** means Napier and Blakeley Consulting Pty Ltd ACN 006 774 705;
- (23) **"Construction Auditor's Engagement"** means the engagement by the Body Corporate of the Construction Auditor to provide services for the benefit of the Body Corporate and Owners in connection with Building Works under Fixed Price Construction Contracts and generally in the form of the engagement in Part C of the Disclosure Statement;
- (24) **"Construction Covenants"** means the deeds of covenant between the Vendor, Owners, the Builder and the Construction Auditor delivered to the Owners with Land Contracts, under which the Owners confirm the Construction Auditor's appointment as their representative under Fixed Price Construction Contracts;
- (25) **"Construction Leases"** means:
- (a) leases of lots in the Building between Owners and the Builder on the same or similar terms to the Purchaser's Construction Lease;
- (b) the Purchaser's Construction Lease; and
- (c) the Body Corporate Construction Lease;
- under the terms of which the Builder has possession of lots in the Building and Common Property to undertake Building Works on the Building Site;
- (26) **"Contract"** means this document, including any schedule or annexure to it;
- (27) **"Contract Date"** means the date this Contract was made;
- (28) **"Default Rate"** means the interest rate that is 2% above the interest rate quoted from time to time by the Vendor's principal banker (as nominated by the Vendor) on

- overdraft accommodation in excess of \$100,000;
- (29) "**Deposit**" means the deposit specified in Item 9 of the Reference Schedule
- (30) "**Deposit Holder**" means the deposit holder specified in Item 10 of the Reference Schedule;
- (31) "**Design Documents**" means the designs, plans, working drawings, perspectives, models, calculations, specifications and other information for the Building Works and includes the Plans;
- (32) "**Development Approvals**" means all "Development Approvals" (within the meaning of the *Integrated Planning Act 1997*) or permits and other consents or authorisations under a Requirement necessary for establishment of the Scheme and the development of the Building Site including undertaking the Building Works;
- (33) "**Development Documents**" means:
- (a) this Contract and other Land Contracts;
 - (b) the Design Documents;
 - (c) the Call Option;
 - (d) the Construction Leases including the Purchaser's Construction Lease;
 - (e) the Fixed Price Construction Contracts including the Purchaser's Fixed Price Construction Contract;
 - (f) the Construction Covenants, including the Construction Covenant executed by the Purchaser;
 - (g) the Community Management Statement;
 - (h) the Entitlement Payment Deeds;

- (i) the Construction Auditor's Engagement;
 - (j) the QS Engagement;
 - (k) the Funding Acknowledgments; and
 - (l) other agreements or arrangements in respect of the Building Site or the parcel which the Vendor may create or require for the Building or the Scheme, including any of those types of documents that the Body Corporate may lawfully enter (including at the instigation of the Vendor);
- (34) "**Disclosure Statement**" means the disclosure statement including the statement under section 213 of the BCCMA that accompanies and forms part of this Contract;
- (35) "**Encumbrance**" includes:
- (a) the Purchaser's Construction Lease;
 - (b) the Body Corporate Construction Lease;
 - (c) any Right or Obligation:
 - (i) created or implied under the BCCMA; or
 - (ii) given, or to be given, over the Scheme land, to the local or other statutory authority or the owner of any other land or lot;
 - (d) any other easements, covenants, leases, transfers or licences over the Building Site or parcel;
- but does not include charges relating to unpaid Outgoings;
- (36) "**Enforcement Action**" means the exercise of a Right arising out of or in connection with a default under, or enforcement of the terms of, this

Contract or a Development Document including the exercise of a Right that may lead to:

- (a) subject to any limitations on the Rights of a party to take Enforcement Action under the relevant Development Document, the termination, rescission or repudiation of this Contract or a Development Document or claim for damages or other compensation under this Contract or a Development Document;
 - (b) the variation of a party's Rights or Obligations under this Contract or a Development Document; or
 - (c) a refusal to comply with, or suspension of performance under, this Contract or a Development Document;
- (37) **"Entitlement Payment Deed"** means the deed delivered to the Purchaser together with this Contract under which it is agreed between the Vendor and the Purchaser that the Purchaser will receive a payment on completion of the Land Contract;
- (38) **"Essential Default Notice"** has the meaning given to it in the Construction Covenants;
- (39) **"Final Subdivision"** means Registration in the applicable office of the Department of Natural Resources, Mines and Energy in accordance with the *Land Title Act 1994* and the BCCMA of a plan of subdivision to reposition, realign, confirm or redefine the boundaries of lots or Common Property in relation to the Building or the Building Site;
- (40) **"Finishes and Fittings"** means the finishes and fittings for the Lot and the Building set out in the Disclosure Statement inclusive of any changes made under clause 31.4;

(41) **"Fixed Price Construction Contracts"** means:

- (a) the Purchaser's Fixed Price Construction Contract;
 - (b) the arrangements contained in the Body Corporate Construction Lease for the undertaking of the Amenities Works in accordance with the Building Concept and Development Documents;
- (42) **"Fixed Price Cost Plan"** has the same meaning as in the Construction Covenants;
- (43) **"Fixed Price Date"** means the date until which the Builder agrees that the Contract Sums under Fixed Price Construction Contracts are not subject to variation;
- (44) **"Funding Acknowledgment"** has the same meaning as in the Purchaser's Construction Covenant;
- (45) **"Governmental Agency"** means any government, semi or local government, statutory, public or other authority having jurisdiction over the Building Site;
- (46) **"Liability"** means damage, loss, liability, cost, charge, expense or payment, including legal costs and expenses, which a party pays, suffers, incurs or is liable for;
- (47) **"Local Authority"** means Brisbane City Council;
- (48) **"Lot"** means the Lot identified in Item 7 of the Reference Schedule and includes the lot created on Registration of the Plan or any Final Subdivision affecting the Lot;
- (49) **"Lot Entitlement"** means in relation to the Lot, the interest schedule lot entitlement or the contribution schedule lot entitlement of the Lot (as the case requires) as stated in the Disclosure Statement and the Community Management Statement for the Scheme;

- (50) **"Normal Expenses"** means normal operating expenses which would usually be payable from the administrative fund of an Body Corporate once it is constituted but which are paid by the Vendor before the Body Corporate has been constituted or the Owners Contributions have been fixed including Outgoings paid by the Vendor prior to Completion;
- (51) **"Obligation"** means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or liability;
- (52) **"Outgoings"** means:
- (a) Rates;
 - (b) taxes, including land tax;
 - (c) charges of any statutory authority;
 - (d) Body Corporate Levies;
 - (e) amounts paid by the Vendor before Body Corporate Levies are fixed which are amounts capable of being included in budgets to be fixed by the Body Corporate; and
 - (f) Normal Expenses;
- (53) **"Owner"** means an owner of a lot in the Building (including the owner of a lot in the Scheme);
- (54) **"Owners Contributions"** means the amounts determined by the Body Corporate to be levied in respect of each Lot as a contribution to the administrative fund and the sinking fund and payable by the Owners in shares proportional to the Lot Entitlements of their respective Lots;
- (55) **"Plan"** means:
- (a) any initial plan of subdivision that subdivides the Building Site into lots for further subdivision; and
 - (b) the draft Volumetric Plan containing the Lot,
- and includes, in either case, the Registered Plan;
- (56) **"Possession Date"** means the date on which the Purchaser is entitled to take vacant possession of the Lot being:
- (a) if clause 27 applies, on Completion; or
 - (b) otherwise, as provided in the Purchaser's Fixed Price Construction Contract;
- (57) **"Possession Preconditions"** means the preconditions to the Purchaser obtaining vacant possession of the Lot referred to in clause 14;
- (58) **"Precommitment"** means the Vendor entering into binding contracts to sell not less than «F88»% of the lots in the Scheme on terms satisfactory to the Vendor in its absolute discretion on or before the Precommitment Date;
- (59) **"Precommitment Date"** means the date specified in Item 13 of the Reference Schedule;
- (60) **"Purchase Price"** means the price specified in Item 8 of the Reference Schedule;
- (61) **"Purchaser's Building Works"** means:
- (a) the construction of those parts of the Building that will contain or be contained in the Lot; and
 - (b) installation of the Service Infrastructure (which is not part of the Amenities) and Finishes and Fittings to the Lot,
- in accordance with the Building Concept and which will, on completion, be handed over as the Apartment;

(62) **"Purchaser's Fixed Price Construction Contract"** means a fixed price construction contract between the Purchaser and the Builder under which:

(a) the Builder contracts to carry out the Purchaser's Building Works as part of the Building Works; and

(b) the Purchaser covenants to pay the Builder for the Purchaser's Building Works and a proportion of the costs of the Amenities Works;

(63) **"Purchaser's Construction Lease"** means a Construction Lease over the Lot in the form delivered to the Purchaser with this Contract;

(64) **"QS Engagement"** means the engagement by the Body Corporate of a quantity surveyor for the purpose of providing certification services to the Body Corporate and Owners in respect of the Building Works in the form of the document in Part C of the Disclosure Statement;

(65) **"Quantity Surveyor"** means the quantity surveyor under the QS Engagement;

(66) **"Rates"** means rates, fire service levies and other charges (including charges for water, sewerage and garbage) imposed by an authority together with any interest, fines and penalties on them;

(67) **"Registration"** means:

(a) registration of a dealing or instrument, including the Plan, in the applicable office of the Department of Natural Resources, Mines and Energy in accordance with the *Land Title Act 1994* and the BCCMA; or

(b) registration of dealing or instrument in the office of the Department of Natural Resources, Mines and

Energy pursuant to another Act,

and **"Registered"** has a corresponding meaning.

(68) **"Remediation"** means the removal, containment (partial or otherwise) and the monitoring of any Environmental Contamination;

(69) **"Requirement"** means any requirement or authorisation of any Governmental Agency, court, government or other authority necessary or desirable under applicable law or regulation and includes the provisions of any statute, ordinance, court order or by-law;

(70) **"Right"** includes any legal, equitable, contractual, statutory or other right, power, authority, benefit, immunity, remedy, discretion or course of action;

(71) **"Scheme"** means the community titles scheme to be established under the BCCMA in respect of the Building Site;

(72) **"Scheme Date"** means the date being 3 years and 5 months from the Contract Date;

(73) **"Service Infrastructure"** means all pipes, cables, wires, ducts, tubes, conduits or other infrastructure of any kind by or through which Services are supplied or provided;

(74) **"Services"** includes water reticulation or supply, gas reticulation or supply, electricity supply, air conditioning, telephone or telecommunications services, computer data or television services, sewerage systems, drainage, systems for removal or disposal of garbage or waste or any other system or service designed to improve the amenity or enhance the enjoyment of lots or Common Property in the Building (including lots or Common Property in the Scheme);

(75) "Special Contribution" means any amount:

(a) levied by the Body Corporate under the regulation module for the Scheme for a liability for which no provision or inadequate provision has been made in the budget of the Body Corporate; or

(b) payable in connection with an exclusive use by-law;

that is not an Outgoing;

(76) "Tax Act" means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) as amended from time to time and the regulations under those Acts;

(77) "Transfer Documents" means a Form 1 transfer under the *Land Title Act 1994* and any other documents required to have the transfer stamped or registered;

(78) "Vendor's Consultant" means any consultant selected by the Vendor to assist in any aspect of the development of the Building Site and establishment of the Scheme.

(79) **Volumetric Plan** means the proposed plan of subdivision in Part B of the Disclosure Statement

1.2 Interpretation

(1) Reference to:

(a) one gender includes the others;

(b) the singular includes the plural and the plural includes the singular;

(c) a person includes a body corporate;

(d) a party includes the party's executors, administrators, successors and permitted assigns;

(i) a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:

(ii) that Statutory Provision as amended or re-enacted from time to time;

(iii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and

(iv) another regulation or other statutory instrument made or issued under that Statutory Provision; and

(e) money is to Australian dollars, unless otherwise stated.

(2) "Including" and similar expressions are not words of limitation.

(3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(4) Headings and any table of contents or index are for convenience only and do not form part of this Contract or affect its interpretation.

(5) A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.

(6) If an act must be done on a specified day, which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (1) If a party consists of more than 1 person, this Contract binds each of them separately and any 2 or more of them jointly.
- (2) An Obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party, which is a trustee, is bound both personally and in its capacity as a trustee.

1.4 Terms In Legislation

Unless the context requires otherwise, terms that have a defined meaning in the BCCMA, or *Land Title Act* 1994 have the same meaning in this Contract.

1.5 Terms in Reference Schedule

Where a term used in this Contract appears in bold type in the Reference Schedule, that term has the meaning shown in the Reference Schedule.

2. Agreement to Sell and Buy

- 2.1 The Vendor agrees to sell and the Purchaser agrees to buy an estate in fee simple in the Lot on the terms of this Contract.

3. Restriction on Re-Sale

- 3.1 The Purchaser must not until after Completion sell, transfer, assign, mortgage or otherwise encumber or in any other way whatsoever deal with its interest in the Lot or any of the Purchaser's Rights or interest in, to or under this Contract.
- 3.2 The Purchaser must not directly or indirectly engage in conduct which is preparatory or analogous to the conduct set out in clause 3.1.
- 3.3 The Purchaser acknowledges that this clause 3 is a fundamental term of this Contract.
- 3.4 The Purchaser acknowledges that damages will not be a sufficient remedy for breach by

the Purchaser of this clause 3 because the Vendor must be able to specifically enforce the restriction on re-sale in this clause 3.

4. Deposit

- 4.1 The Purchaser must pay the Deposit to the Deposit Holder at the times specified in the Reference Schedule.
- 4.2 The Purchaser defaults if it:
 - (1) does not pay all of the Deposit when due;
 - (2) pays by a cheque that is dishonoured; or
 - (3) pays by post-dated cheque.
- 4.3 The Purchaser satisfies its Obligations to pay the Deposit if it provides a Bank Guarantee to the Vendor within 7 Business Days of the Contract Date.
- 4.4 If the Bank Guarantee is called on, the amount paid under it will be the Deposit and must be paid to the Deposit Holder and then to the party entitled to the Deposit under clause 4.12.
- 4.5 If the Purchaser does not otherwise pay the Deposit or deliver a Bank Guarantee in accordance with this Contract, then the Vendor may, in addition to any other remedies available to it under this Contract, recover the unpaid Deposit as a liquidated debt. If the Vendor has not rescinded or terminated this Contract, then the Deposit must be paid to the Deposit Holder.
- 4.6 The Vendor may at any time prior to the Completion Date, require the Purchaser to provide an amended or substitute Bank Guarantee if the Bank Guarantee provided by the Purchaser is subject to any limitation or expiry date that is not satisfactory to the Vendor.
- 4.7 The Deposit Holder is authorised to:
 - (1) invest the Deposit with a bank in the name of the Deposit Holder in trust in an interest bearing account for the Vendor and the Purchaser;

(2) provide the parties' tax file numbers under applicable income tax legislation when making the investment;

(3) comply with all Requirements in connection with investment of the Deposit.

4.8 The Deposit is invested at the risk of the party ultimately entitled to receive it.

4.9 The parties must give the Deposit Holder tax file numbers and any other information needed by the Deposit Holder for the investment.

4.10 The parties indemnify the Deposit Holder against any loss arising from the investment of the Deposit (except failure to invest the Deposit).

4.11 The Deposit Holder must pay:

(1) the Deposit to:

(a) if this Contract Completes, the Vendor;

(b) if this Contract is terminated without default by the Purchaser, the Purchaser; or

(c) if this Contract is terminated because of the Purchaser's default, the Vendor; and

(2) interest on the Deposit to:

(a) if Completion occurs, the Vendor and the Purchaser equally; or

(b) in any other case, the party entitled to the Deposit.

4.12 The Vendor and the Purchaser acknowledge that:

(1) each is aware of the tax file number provisions contained in Part VA of the Tax Act;

(2) the Deposit Holder is not required to invest the Deposit if the Deposit Holder does not receive the tax file number of each party prior to the Contract Date;

(3) each is aware that where the Deposit is invested but the Deposit Holder has not received the tax file number of either party prior to the Contract Date, tax will be deducted from the interest earned on the Deposit.

5. GST Inclusive

5.1 The Purchaser is not liable to make any payment in addition to the Purchase Price on the Completion Date in respect of the amount of any goods and services or similar tax (GST) for which the Vendor is or may become liable in respect of the supply of the Lot under this contract to the Purchaser.

5.2 For the avoidance of doubt, where the margin scheme may be applied to the supply of the Lot under this Contract, and the Vendor advises the Purchaser in writing that it wishes to apply the margin scheme, then the parties agree that the margin scheme will apply to the supply of the Lot.

6. Adjustments to Purchase Price

6.1 The Vendor is liable for Outgoings and Special Contributions up to and including the Possession Date. The Purchaser is liable for Outgoings and Special Contributions after the Possession Date.

6.2 Outgoings (other than land tax) must be apportioned:

(1) if they are paid, on the amount actually paid;

(2) if they are unpaid, on the amount payable disregarding any early payment discount; or

(3) if they are not separately assessed, for the Lot, on the amount and in the manner specified by the Vendor's Solicitor.

6.3 If Outgoings are apportioned in the Vendor's favour but are unpaid, the Vendor must pay those Outgoings by the due date shown in the relevant assessment or (if there is no separate assessment) a reasonable time after the relevant assessment issues.

6.4 Body Corporate Levies include the same proportion of any Body Corporate insurance premium that the Vendor must pay under the BCCMA as the interest schedule lot entitlement for the Lot bears to the aggregate interest schedule lot entitlement for the Scheme.

6.5 The Vendor may cause the Body Corporate to pass a resolution raising an interim levy for the period from establishment of the Scheme but without prejudice to the Vendor's Right to recover proportions of any Body Corporate insurance premium referred to in clause 6.4.

6.6 Land tax must be apportioned:

(1) where a separate valuation has issued for the Lot only, on the basis of the actual assessment issued for the Lot; or

(2) if there is no separate assessment for the Lot, then according to the same proportion of the land tax amount for the Land calculated under clause 6.7 as at the previous 30 June as the interest schedule lot entitlement Lot bears to the aggregate interest schedule lot entitlement for the Scheme; and

(3) on the basis that it is paid.

6.7 The land tax amount referred to in clause 6.6(2) is an amount for land tax calculated in respect of the Land on the basis that the Land is the Vendor's only land and using the unimproved value of the Land apportioned to the Scheme land by the Vendor.

6.8 The Purchaser must not require a retention or payment of any part of the Balance Purchase Price for unpaid Outgoings.

6.9 If an Outgoing is adjusted on an amount that proves to be different from the actual amount of the Outgoing for the relevant period then either party may require a readjustment. The Vendor need not comply with an Obligation to pay an Outgoing until the readjustment is made.

7. Completion

7.1 The Completion Date is the date that is 14 days after the date on which the Vendor notifies the Purchaser in writing of the satisfaction of the Completion Preconditions. The Vendor's notice is conclusive evidence of the satisfaction of the Completion Preconditions.

7.2 Upon Completion, title to, property in and risk of the Lot and the Building Works and any matter concerning the Lot and the Building Works passes to the Purchaser, subject to the terms and conditions of this Contract and where applicable, the Development Documents.

7.3 Completion must take place at a place nominated by the Vendor and before 5 p.m. on the Completion Date. If the parties agree on a time for Completion, that is for convenience only.

7.4 At Completion, the Purchaser must pay the Balance Purchase Price to the Vendor and the Vendor must give the Purchaser:

- (1) any certificate of title for the Lot; and
- (2) the unstamped Transfer Documents (unless previously given) in registrable form.

8. Vendor's Obligations by Scheme Date

8.1 The Vendor must endeavour to establish the Scheme and create the Lot substantially as described in this Contract before the Scheme Date.

8.2 The Vendor's Obligations under clause 8.1 are subject to any Right of the Vendor to rescind or terminate this Contract and the Vendor's Rights under the following clauses:

- (1) clause 13.2 – if any of the Completion Preconditions are not satisfied by the Scheme Date;
- (2) clause 23 – the Vendor's Rights in respect of the Building Concept;
- (3) clause 26 – the Vendor's Rights in respect of a Final Subdivision; and

- (4) clause 31 – Vendor's Rights to make changes to the Scheme.

8.3 The Purchaser has no claim against the Vendor whatsoever in respect of the Vendor exercising any of the Vendor's Rights referred to in clause 8.2, and releases and discharges the Vendor absolutely from and against all claims and any Liability whatsoever, in respect of or arising from the Vendor exercising any of those Rights.

9. Transfer Documents

9.1 The Vendor will prepare and deliver to the Purchaser, the Transfer Documents at least 5 Business Days before Completion.

9.2 In preparing the Transfer Documents, the Vendor may rely upon the description of the Purchaser contained in Item 4 of the Reference Schedule and the Purchaser must, on request from the Vendor, confirm any details required to enable the Vendor to complete the Transfer Documents.

9.3 The Purchaser must not make any claim against the Vendor in relation to any errors or misdescriptions in the Transfer Documents and releases the Vendor from any liability in relation to errors or misdescriptions.

10. Production of Documents

10.1 The Vendor must produce the Transfer Documents for stamping if:

- (1) the Purchaser's Solicitor undertakes to use them for stamping only and to return them to the Vendor before Completion; or
- (2) where the Purchaser has no solicitor, the Purchaser pays the Vendor's Solicitor's reasonable expenses of producing them at the Office of State Revenue.

11. Time

11.1 Time is of the essence of this Contract.

11.2 If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this Contract.

11.3 An agreement to vary a time requirement must be in writing.

12. Possession

12.1 The Purchaser is not entitled to occupy the Lot until the Possession Preconditions are satisfied.

12.2 The Purchaser acknowledges that:

- (1) the Completion Date may be prior to the Possession Date;
- (2) if satisfaction of the Possession Preconditions is delayed by matters certified by the Builder's Representative under the Purchaser's Fixed Price Construction Contract as being beyond the control of the Builder, the Possession Date may be extended by the certified period of delay.

13. Completion Conditions

13.1 The Obligations of the parties to Complete this Contract are subject to the satisfaction of the following Completion Preconditions on or before the Scheme Date:

- (1) the Vendor obtaining the Precommitment and all contracts making up the Precommitment becoming unconditional;
- (2) all required Development Approvals being obtained, whether by or on behalf of the Vendor or another person, on terms satisfactory to the Vendor to enable the Scheme to be established and to allow construction of the Building Works to commence;
- (3) Registration of the Plan and the creation of the Scheme;
- (4) a separate title for the Lot is issued; and
- (5) execution of all Development Documents by the parties to those Documents, including a Fixed Price Construction Contract in respect of each lot in the Building, including lots in the Scheme.

13.2 If the Completion Preconditions are not satisfied by the Scheme Date or the Vendor at any time prior to the Scheme Date determines that they are not able to or likely to be satisfied, the Vendor may terminate this Contract by notice in writing to the other party.

14. Preconditions to Possession

14.1 The following are Possession Preconditions:

- (1) Completion;
- (2) completion of the Building Works to the extent required to allow lawful occupancy and delivery of possession to the Lot in accordance with the Purchaser's Fixed Price Construction Contract;
- (3) satisfaction of any other Requirements necessary to allow legal occupancy of the Lot;
- (4) completion of any Final Subdivision; and
- (5) surrender of the Purchaser's Construction Lease in accordance with its terms.

14.2 The Purchaser acknowledges that the Possession Preconditions are to be satisfied in accordance with the terms of the Development Documents.

15. No Requisitions on Title

15.1 The Purchaser may not deliver requisitions on title.

15.2 The Vendor states that, except as disclosed in this Contract, each of the following statements is accurate at the date of this Contract:

- (1) the Vendor has free and unqualified capacity and power to contract and to complete this Contract;
- (2) the Vendor is not under any legal disability that affects the Vendor's capacity to contract and to complete this Contract;

(3) if the Vendor is a trustee, the Vendor has free and unqualified power of sale under the relevant trust instrument to enter into and complete this Contract; and

(4) the Vendor, if a corporation, is not an externally-administered body corporate under the *Corporations Act*, a controller (as defined in section 9 of the *Corporations Act*) has not been appointed to the Vendor's property and steps have not been taken for the appointment of such a person.

16. Disclosure Statement and Documents

16.1 The Purchaser acknowledges that before it signed this Contract it:

- (1) received and read the Disclosure Statement;
- (2) received and signed the PAMD Form 30c Warning Statement which the Purchaser agrees is attached to the front of this Contract; and
- (3) received the statement required under section 219 of the BCCMA comprised in the Disclosure Statement.

17. No Representation

17.1 The Purchaser has not relied on any representation made by the Vendor, the Vendor's Consultant or the Agent or any other person in entering into this Contract other than as expressly set out in this Contract.

17.2 The Purchaser agrees that information in brochures and models for the development is indicative only and is not to be relied on or relied on the Purchaser acknowledges that it elects to do so at its own risk and with a full understanding that the completed Building and Lot may vary from the information or position in those brochures and as represented in any models.

17.3 The Purchaser acknowledges that it has had the opportunity to obtain independent legal, taxation and financial advice about the

matters and content of the terms of this Contract and all documents referred to in it and the Disclosure Statement.

18. Lot Subject To

18.1 The Lot is sold subject to:

- (1) the BCCMA;
- (2) the Plans and all things contained in or endorsed on them;
- (3) the Encumbrances;
- (4) any matter in the Disclosure Statement or material which accompanies the Disclosure Statement; and
- (5) anything disclosed by the Vendor in this Contract.

19. Vendor's Obligations

19.1 Subject to any Right of the Vendor to terminate this Contract, and the Vendor's other Rights under this Contract, the Vendor must establish the Scheme substantially as described in this Contract or the Disclosure Statement

20. Plans

20.1 In this Contract a reference to the Lot is a reference to the Lot as shown on the Volumetric Plan.

20.2 The Purchaser acknowledges that:

- (1) for the purpose of describing the Lot, including its boundaries, dimensions, size, layout, configuration and location, the Volumetric Plan takes precedence over any other plans to the extent of any inconsistency with those other plans and is the Plan to which reference is to be made in interpreting any clause in this Contract in connection with those matters;
- (2) subject to any Rights under the BCCMA or other applicable

legislation that cannot be excluded, the Purchaser cannot make any claim for compensation or damages or refuse to perform or purport to terminate this Contract because of any differences between the Volumetric Plan and any other plans that are not a material alteration of the dimensions or configuration of the Lot from those shown on the other Plans.

20.3 An increase in the area of the Lot or a decrease in the Lot's floor area of up to 5% from the Volumetric Plan as provided to the Purchaser in any further statement under the BCCMA and as subsequently registered is not a material alteration or a matter that will cause material prejudice to the Purchaser (and this is acknowledged by the Purchaser under this clause 20.3) for the purposes of clauses 31.3(5), and 31.3(7).

21. Measurements

21.1 Without limiting clause 20.2(1), the dimensions and description of boundaries of the Lot and common property shown on the Volumetric Plan supersede and take precedence over any other plans (including the Plans), architectural drawings, models or other representations of the Lot that the Purchaser may have seen or been provided with (whether before or after the date of this Contract).

21.2 Without limiting clause 20.2(2), the Lot area will be calculated by reference to the boundaries defined in the Volumetric Plan as registered.

22. Land Development

22.1 The Vendor owns the Land.

22.2 The Vendor may, subject to obtaining any necessary Development Approval, and without objection from the Purchaser:

- (1) reconfigure the Land to establish the Scheme;
- (2) do anything referred to in clause 20;
- (3) grant any access or other Rights for services over the Land considered

necessary by the Vendor, or required by an assessing authority, for the development and operation of the Scheme;

- (4) require the Body Corporate to execute a community management statement after establishment of the Scheme to give effect to development and operation of the Scheme, including in the way described in this Contract and the community management statement for the Scheme;
- (5) require the Body Corporate to execute documents after establishment of the Scheme to give effect to development and operation of the Scheme including in the way described in this Contract and the community management statement for the Scheme;
- (6) develop the Land, including the Scheme land, in a way authorised by Development Approvals obtained for the Land;
- (7) cause the committee or Body Corporate to meet and attend to any matter for which the Body Corporate is responsible or may consider including, without limitation, determination of budgets and contributions to costs and expenses to be made by owners of lots in the Scheme; and
- (8) exercise any of its other Rights referred to in this Contract in connection with the development of the Land, construction of the Building and establishment of the Scheme and uses within the Building.

22.3 The Purchaser acknowledges that:

- (1) the Development Approval for the Building may include specific requirements;
- (2) the Vendor may make or cause to be made any changes or variations to the appearance or construction of the Building to comply with the Development Approval and the Purchaser must not object to, make

any claim for compensation or damages or refuse to settle or purport to terminate this Contract on the basis of any changes made or caused to be made by the Vendor as referred to in this clause 22.3;

- (3) the Land is affected by the terms and conditions of Development Approvals for the development of the Land and construction of the Building requires compliance with those Requirements; and
- (4) the Vendor may do anything it determines as being reasonably necessary to comply with Development Approvals in respect of the Building and the Purchaser must not object to or make any claim for compensation or damages, refuse to Complete or purport to terminate this Contract on account of any steps taken by the Vendor to comply with those Requirements.

23. Building Concept

23.1 The Purchaser acknowledges that:

- (1) The Vendor has appointed the Construction Auditor and other Consultants to develop the Building Concept;
- (2) The Vendor will not proceed to Completion unless the Completion Preconditions are satisfied and intends, through or with the assistance of the Construction Auditor and without limiting its Rights under clause 8 or clause 13, to:
 - (a) procure the obtaining of Development Approvals for the Building Concept (if not obtained as at the date of this Contract);
 - (b) subdivide the Building Site, establish the Scheme and endeavour to cause the issue of a separate title for the Lot;
 - (c) cause the Construction Auditor and the Vendor's Consultants to consult with

the Builder to ensure that the Building can be constructed on the Building Site and within the applicable boundaries of the Lot (to the extent that the Building will contain or be contained in the Lot) after establishment of the Scheme; and

- (3) the Vendor will engage selling agents to market the sale of interests in titles to lots (and whether proposed or, when the Scheme is established, existing lots) in the Scheme on the basis that the Body Corporate, the Purchaser and other Owners will be responsible for the construction of the Building Works on the Building Site under the arrangements comprised in the Development Documents and disclosed in the Disclosure Statement to this Contract;
- (4) without limiting circumstances in which the Construction Auditor may otherwise issue an Essential Default Notice, the Construction Auditor is entitled to issue an Essential Default Notice and appoint an alternative builder before Completion if the Builder defaults under its Obligations to the Vendor and the Construction Auditor whether under the Development Documents, a project co-ordination deed with the Vendor and the Construction Auditor, or otherwise.
- (5) the Builder (and any alternative builder substituted for the Builder) will be responsible for undertaking all of the Building Works under Fixed Price Construction Contracts and Construction Covenants;
- (6) purchasers of lots in the Scheme, including the Purchaser, and the Body Corporate are not entitled to appoint their own builder or contactor to undertake Building Works except as provided for under the Development Documents;
- (7) although the Vendor has entered into a development management agreement with the Construction

Auditor, and a project coordination deed with the Construction Auditor and the Builder, the Vendor is not responsible or liable to the Purchaser under any Development Document or otherwise, for the construction of the Building or performance of the Builder's, the Construction Auditor's or another party's Obligations under any Development Document;

- (8) The Construction Auditor will be the:
 - (a) purchaser's representative in dealings with the Builder under the Purchaser's Fixed Price Construction Contract;
 - (b) Body Corporate's service contractor to act as its representative under the Body Corporate's Fixed Price Construction Contract; and
 - (c) representative of other purchasers of lots in the Scheme in dealings with the Builder under their respective Fixed Price Construction Contracts;

for the purpose of monitoring compliance by the Builder with its Obligations under the relevant Development Documents; and

- (9) The Purchaser's Rights in respect of the Building Works are limited to its Rights under the Development Documents.

23.2 Without limiting any other Right of the Vendor, including a Right under the BCCMA, the Vendor is entitled after Completion to:

- (1) exercise any of its continuing Rights under this Contract;
- (2) exercise any Rights it has as original owner for the Scheme under the BCCMA or Development Documents disclosed by the Vendor in this Contract; and
- (3) require the Purchaser to execute documentation disclosed by the Vendor in this Contract;

for the purpose of:

- (4) maintaining the integrity of the Building Concept;
- (5) ensuring compliance with Development Approvals obtained in connection with the Building Concept and Building Works; and
- (6) ensuring that the Purchaser complies with its Obligations under this Contract and the other Development Documents to which it is a party.

23.3 The Purchaser:

- (1) agrees that the Purchaser has no claim against the Vendor whatsoever in respect of any Liability incurred or suffered by the Purchaser; and
- (2) releases and discharges the Vendor absolutely from and against all claims and any Liability;

arising out of or in connection with

- (3) the undertaking or carrying out of the matters set out in clause 14.1(2);
- (4) the terms of the development applications the Vendor submits for the Development Approvals;
- (5) the manner of subdivision of the Building Site;
- (6) the Fixed Price Construction Contracts, construction of the Building, the Builder or the acts or omissions of the Construction Auditor; and
- (7) the exercise of the Vendor's Rights and powers referred to in clauses 23.1 and 23.2.

23.4 The Parties acknowledge and agree that this Contract may be pleaded in bar to any action, suit or proceeding in connection with the matters in clause 23.3.

24. Building Works after Completion

24.1 The Purchaser will acquire an estate in fee simple in the Lot under, and is required to Complete this Contract on the Completion Date before (subject to clause 27) commencement and completion of the Building Works.

24.2 The Purchaser must (subject to clause 27) enter into the Purchaser's Fixed Price Construction Contract with the Builder for the completion of Building Works in or on the Lot.

24.3 The Building Site (including the Common Property and the parcel which contains the Lot) will be developed after the Completion Date by the erection of the Building Works and undertaking of any Final Subdivision (if applicable) in accordance with the Development Documents. These documents include the Fixed Price Construction Contracts.

24.4 After Completion the Purchaser must, as a continuing Obligation under this Contract, observe the terms of the Development Documents to which it is a party or that are otherwise binding on the Purchaser in connection with the development of the Building Site, (including the parcel) and completion of the Building Works. This Obligation includes complying with the Purchaser's Fixed Price Construction Contract.

24.5 The Purchaser consents to:

- (1) the Vendor (as owner of the Lot prior to Completion) executing and Registering the Purchaser's Construction Lease to ensure the Builder has possession of the Lot to undertake Building Works;
- (2) the Vendor causing the Body Corporate to enter into the Body Corporate Construction Lease, whether before or after Completion; and
- (3) the Body Corporate engaging the Construction Auditor under the Construction Auditor's Engagement, whether before or after Completion.

24.6 At the Vendor's discretion, the Purchaser's Construction Lease may be Registered after

Completion in which case the Vendor may deliver the Purchaser's Construction Lease to the Purchaser prior to Completion and the Purchaser must:

- (1) execute and return the Purchaser's Construction Lease; and
- (2) ensure that the Purchaser's financier consents to the Purchaser's Construction Lease and allows Registration of the Purchaser's Construction Lease on or after the Completion Date.

24.7 If the Vendor elects to Register the Purchaser's Construction Lease after Completion, then the Purchaser's Construction Lease will commence on the day after the Completion Date and terminate on the Possession Date.

24.8 The Purchaser acknowledges that the Construction Auditor will perform the Construction Auditor's Engagement and exercise Rights under the Construction Covenant for the benefit of the Body Corporate and the Purchaser in connection with:

- (1) the observation by the Builder of its Obligations under the Purchaser's Fixed Price Construction Contract; and
- (2) development of the Building Site in accordance with the Building Concept and the Development Documents.

24.9 The Vendor may take any step or exercise any Right in respect of the development of the Building Site preserved to or for the benefit of the Vendor under this Contract, any other Development Document or the BCCMA including, to the extent that the Vendor is entitled to exercise any Rights in respect of voting of Owners at meetings of the Body Corporate, the Right to cause the Body Corporate to give any consent required under the BCCMA in relation to the construction of the Amenities Works.

24.10 The Purchaser acknowledges that:

- (1) the Vendor is not liable for a breach by the Builder of the Purchaser's

Fixed Price Construction Contract in respect of Building Works; and

- (2) the Vendor, the Construction Auditor or their nominees may have Fixed Price Construction Contracts with the Builder as an Owner (for unsold lots in the Building) under similar arrangements in connection with Building Works as those accepted by the Purchaser under this Contract.

24.11 The Purchaser releases and indemnifies the Vendor from and against any claim, action or demand in respect of any loss, damage, expense, cost or charge incurred or suffered by the Purchaser arising out of or in connection with a failure by the Builder to comply with the Builder's Obligations under the Purchaser's Fixed Price Construction Contract.

25. Further Obligations after Completion Date

25.1 The Purchaser must ensure that any financier to the Purchaser, including any financier Registered or enrolled as a mortgagee or chargee of the Lot after the Completion Date, gives any necessary consent and executes any relevant authorisation or document to allow the Purchaser to perform and discharge its Obligations under this Contract and the Development Documents to which it is a party that are to be performed after the Completion Date.

26. Final Subdivision

26.1 The Purchaser acknowledges that it may be necessary for a Final Subdivision to be undertaken after the Completion Date.

26.2 The Purchaser must, if required by the Vendor:

- (1) sign and consent to any plan or other document reasonably required to effect the Final Subdivision;
- (2) vote in favour of any resolution proposed at a meeting of the Body Corporate (unless that motion would contravene a restriction in the BCCMA) required to give effect to the Final Subdivision or any other

documents required as a result of the Final Subdivision;

- (3) ensure that a Purchaser's financier who has an interest in the Lot provides any consent necessary to allow the Final Subdivision to be effected; and
- (4) execute any collateral mortgage required by the Purchaser's financier mentioned in clause 26.2(3) over any additional area included in the Lot as a result of the Final Subdivision.

27. Postponement of Completion Date

27.1 The Vendor may give notice to the Purchaser that:

- (1) establishment of the Scheme and creation of title for the Lot is conditional on the completion of the Building Works (whether under Development Approvals, any other Requirement or for any other reason); or
- (2) the Vendor, for any other reason, determines that the Completion Date will be a date after completion of the Building Works.

27.2 If the Vendor gives the Purchaser notice under clause 27.1, then the Vendor may terminate this Contract under clause 39 or otherwise notify the Purchaser about any or all of the following:

- (1) that the preconditions in clauses 14.1(2) and 14.1(3) are taken to be Completion Preconditions;
- (2) that preconditions in clauses 14.1(4) and 14.1(4) will not apply if any of those matters are not required or will not apply to the establishment of the Scheme or completion of the Building Works or a part of them;
- (3) that construction of the Building Works, or a part of them, will be undertaken by the Builder (or any other builder of the Vendor's choice in its absolute discretion) under a contract or contracts with the Vendor;

(4) that transfer of title to the Lot will not be made subject to the Purchaser's Construction Lease;

(5) that the Body Corporate will not engage the Construction Auditor under the Construction Auditor's Engagement on or after establishment of the Scheme; and

(6) about changes to the Owners Contribution for the Lot necessitated by establishment of the Scheme taking place after completion of the Building Works.

27.3 Subject to any Rights the Purchaser has under Queensland legislation which cannot be excluded by this Contract, the Purchaser must not make any objection to or refuse to Complete this Contract because of any of the matters referred to in clause 27.1 including the fact that the Vendor chooses to engage a builder, other than the Builder, to undertake the Building Works.

27.4 The Purchaser acknowledges that:

(1) if establishment of the Scheme and creation of a title for the Lot is to occur after completion of the Building Works:

(a) Owners Contributions will be greater in the first financial year of the Body Corporate than disclosed in this Contract because Building Works will have been completed on the parcel; and

(b) there may be changes to the value of the Lot as at the date of establishment of the Scheme because the Building Works will have been completed before the Purchaser becomes the Registered Owner; and

(2) other purchasers of lots in the Scheme may acquire title to their lots prior to commencement or completion of the Building Works.

27.5 If the Vendor gives a notice under clause 27.1:

- (1) it or its nominee may:
 - (a) engage the Builder, or any other builder of the Vendor's choice in its absolute discretion, to construct the Building Works or any relevant part of the Building Works as the case requires;
 - (b) enter into any other contract or arrangement considered necessary by the Vendor to ensure completion of the Building Works or any relevant part of the Building Works;
- (2) the Purchaser's Fixed Price Construction Contract will terminate in accordance with its terms;
- (3) the Body Corporate's Fixed Price Construction Contract may terminate (in accordance with its terms) or not be executed if the Vendor contracts for the construction of the Amenities Works;
- (4) the Purchase Price will be varied to be an amount equal to the aggregate of:
 - (a) the Purchase Price as specified prior to the Vendor exercising its Rights under this clause 27; and
 - (b) the contract sum the Purchaser would have been liable to pay to the Builder for the Building Works under the Purchaser's Fixed Price Construction Contract;
- (5) the provisions of clause 29 apply to defects in construction of the Building Works; and
- (6) the Vendor must ensure that the Purchaser is given keys and door opening codes (if any) for the Lot on the Possession Date.

27.6 If the Vendor gives a notice under clause 27.1, any Finishes and Fittings and any chattels that were to be provided under the Purchaser's Fixed Price Construction Contract must be provided by the Vendor under this Contract and from the Possession Date, the Vendor assigns to the Purchaser, as far as it is able, any manufacturer's warranties for the Finishes and Fittings or chattels in the Lot. Anything further necessary to complete the assignment is the Purchaser's responsibility. The Vendor may substitute an item of Finishes and Fittings as long as the new item is of substantially like quality.

28. Contract Variation

28.1 The Vendor may prepare and require the Purchaser to execute a Deed of Variation to this Contract or any Development Document to take into account any of the changes the Vendor may validly require the Purchaser to agree to, as a result of the exercise of the Vendor's Rights under clauses 23, 26, 27 and 31.

29. Defects

29.1 This clause 29 only applies if clause 27 applies.

29.2 The Purchaser may inspect the Lot and the Amenities after completion of the Building Works once in the presence of the Vendor's Consultant prior to the Possession Date for the purpose of establishing the condition of the Lot and the Amenities on or before the Possession Date.

29.3 The Vendor must cause the Builder to agree to fix defects of workmanship or materials in respect of the Building Works on or in the Lot that are notified to the Vendor up to at least 3 months after the Possession Date.

29.4 Clause 29.3 does not apply to defects caused by:

- (1) temperature changes and normal settlement;
- (2) fair wear and tear or minor shrinkage; or

- (3) matters that would normally be rectified by ordinary maintenance;

unless those defects are the result of defective workmanship or the use of defective materials.

- 29.5 The Purchaser must perform this Contract and pay the Purchase Price and any other amount notified by the Vendor under clause 27.5(4) regardless of any defects in the Building, the Amenities, the Lot or any Finishes and Fittings or chattels included in the sale, whether due to defective materials, workmanship or any other cause.

30. Lot Sold Subject To

- 30.1 Despite anything else in this Contract, the Purchaser accepts that the Lot is sold subject to the following:

- (1) the BCCMA;
- (2) arrangements for implementation of the Building Concept referred to in this Contract and the Development Documents;
- (3) the Encumbrances;
- (4) any matter in the Disclosure Statement or material which accompanies this Contract;
- (5) any easement, either benefiting or burdening the Lot for the passage or provision of any Services in, through or over the Lot, whether existing as at the date of this Contract or proposed under the terms of this Contract or other relevant Development Documents; and
- (6) all matters disclosed by the Vendor, and any Right of the Vendor or Obligation on the Purchaser, in connection with the development of the Building Site (including the parcel) and establishment of the Scheme and whether exercisable before or after the Completion Date.

31. Scheme Changes

- 31.1 The Vendor may (without limiting any other Right of the Vendor) do any of the things described in clause 20, 22, and this clause 31.

- 31.2 Subject to any Rights the Purchaser has under this Contract, the BCCMA or other applicable legislation that cannot be excluded, the Purchaser must not make any claim for compensation or damages, refuse to Complete or purport to terminate this Contract for any of the matters disclosed in clauses 20, 22, and this clause 31.

- 31.3 The Vendor may make changes that affect the Scheme, the Building Concept and the Lot, including, changes to:

- (1) the name of the Building or the Scheme;
- (2) the proposed Community Management Statement for the Scheme;
- (3) the design, size, location, configuration, number or use of the lots in the Building or the Scheme (apart from the Lot) as long as the Vendor takes reasonable steps to adhere to the Building Concept where possible;
- (4) the design or construction of the Building and the Amenities as indicated in the Building Concept as long as the change does not materially adversely affect the Purchaser;
- (5) the Plan as long as the change does not alter the size of the Lot by more than 5% from that shown on the Plan;
- (6) the Finishes and Fittings, in the manner provided for under clause 31.4;
- (7) the size of the Lot, by reducing the area by up to 5% from that shown on the Plan;
- (8) the car spaces and car parking arrangements for the Building and the Scheme, including the way in

which car spaces are allocated to lots in the Scheme and whether by exclusive use or on title;

- (9) comply with any Requirement or any recommendation of the Vendor's Consultant adherence to which is reasonably required to implement the Building Concept;
- (10) the proposed lot entitlements of lots in the Scheme (including the Lot);

and may:

- (11) without limitation to its Rights under the BCCMA, call an extraordinary general meeting of the Body Corporate or a meeting of the committee prior to or after the Completion Date to consider and approve any matter or thing the Vendor considers necessary for the operation and administration of the Scheme and completion of Building Works including the exercise and performance of the functions of the members of the committee of the Body Corporate;
- (12) exercise Rights by way of proxy or as attorney for the Purchaser to vote at meetings of the Body Corporate;
- (13) to the extent that the Vendor is entitled to exercise any Rights in respect of voting of Owners at meetings of the Body Corporate, cause the Body Corporate to do anything to ensure the Body Corporate complies with its Obligations under the Development Documents to which it is a party.

31.4 The Vendor may change without notice to the Purchaser:

- (1) any finish specified in the schedule of Finishes and Fittings to another finish of substantially like quality;
- (2) any item to be installed in the Lot and the Building specified in the schedule of Finishes and Fittings to another item of substantially like quality.

31.5 The Vendor must notify the Purchaser of changes referred to in clause 31.2 within a

reasonable time of those changes being made.

31.6 Any dispute arising prior to Completion about whether:

- (1) the Finishes and Fittings are of the same quality as referred to in clause 31.3(6);
- (2) the size of the Lot has been reduced by more than 5% as referred to in clause 31.3(7); or
- (3) adherence to a Vendor's Consultant's recommendation is reasonably required to implement the Building Concept as referred to in clause 31.3(9);

must be determined under clause 41 by an expert agreed on by the parties or failing agreement appointed by the President of the Queensland Law Society at the request of either party and the parties agree to be bound by the decision of the expert.

31.7 For the purpose of this clause 31 (and determination of any dispute under clause 41 in respect of the reduction of the size of the Lot), changes to the size or area of the Lot by reference to the Plan are to be determined by reference to the area in square metres of the footprint of the Lot if projected in two-dimensions on the surface of the Building Site.

32. Environmental Notice

32.1 The Vendor discloses and the Purchaser acknowledges that the Land has been contaminated by previous uses of the Land and is registered on the Environmental Management Register.

32.2 The Purchaser acknowledges having received from the Vendor, prior to entering into this Contract, a notice under section 421 of the *Environmental Protection Act 1994 (Qld)* (**Environmental Protection Act**) as disclosed in the Disclosure Statement.

32.3 The Purchaser releases the Vendor and its servants, agents and the Vendor's Consultants from all liability arising in respect of:

- (1) any residual contamination and all testing carried out by the Vendor's Consultants; and
- (2) any contamination of the Land caused by sources emanating outside of the Land after establishment of the Scheme.

32.4 The Purchaser must complete this Contract regardless of whether at the Date for Completion the Land is listed on the Environmental Management Register under the *Environmental Protection Act* or any notice has issued under the *Environmental Protection Act*.

32.5 The Purchaser acknowledges that it will complete this Contract relying on its own investigations and enquiries and not in reliance on any representation by the Vendor or any agent or Vendor's Consultant concerning the level of contamination of the Land (other than as stated in this clause 32).

32.6 The Vendor may take any step or action to comply with or cause compliance with the terms of the Approvals, the Community Management Statement or Requirements of any relevant Government Agency in relation to any site management plan affecting the Land and the Scheme land.

32.7 On completion of this Contract, the Purchaser will assume responsibility for the presence of any contamination including compliance with all laws and lawful requirements of any competent authority with respect to that contamination. Despite completion, the Purchaser will indemnify the Vendor, its servants, agents and consultants against all losses, damages, costs and expenses which they may incur arising in respect of compliance with those laws or requirements or in respect of injury to any person or property as a result of the presence of any contamination

33. Information Provided to the Purchaser

33.1 The Purchaser acknowledges that:

- (1) the provisions of this Contract and any applicable Development Documents contain the entire agreement between the parties;

- (2) it does not rely upon any statement, advertisement, representation, warranty, condition or promise made by the Vendor, the Construction Auditor, the Agent or any other person in entering into this Contract other than as set out in this Contract; and

- (3) information in brochures and models for the Building Concept is indicative only and is not to be relied on.

34. Independent Advice

34.1 The Purchaser acknowledges that it has obtained independent legal, taxation, financial and other expert advice (or has had the opportunity to obtain that advice but declined to do so) in respect of and is satisfied about the matters and content of this Contract and all documents referred to in it, including:

- (1) the way in which the Building Works will be undertaken and the terms of the Development Documents to which the Purchaser is a party or which otherwise affect the conduct of the Building Works;
- (2) the continuing Rights of the Vendor to require compliance with the terms of the Development Documents by the Purchaser;
- (3) the Vendor's Rights in respect of:
 - (a) the Building Concept under and subject to clause 23;
 - (b) Building Works after Completion and under clause 24; and
 - (c) the Scheme arrangements under and subject to clause 31;
- (4) the role of the Construction Auditor in connection with the Building Works after Completion;
- (5) a Final Subdivision under clause 26;
- (6) postponement of the Completion Date until Building Works are

completed under and subject to clause 27; and

- (7) Contract Variations under clause 28;
- (8) the nature of the Lot, the Building and the Scheme and the purposes for which the Lot may be lawfully used;
- (9) the nature and suitability of the Development and the Lot for the Purchaser's purposes;
- (10) the way in which the Building Site or the Lot is affected by:
 - (a) any Environmental Law;
 - (b) planning instrument (actual or deemed);
 - (c) any requirement relating to the zoning, development or use of the Building Site (including the height of the Building);
 - (d) any existing proposals for the realignment, widening or siting of a road by any Government Agency;
- (11) the Purchaser's entitlement (if any) to claim income tax deductions under the *Tax Act* for depreciation or any plant or equipment or in connection with the costs of Building Works in the Lot; and
- (12) any financial forecasts, returns or feasibility relating directly or indirectly to the purchase of the Lot as an investment.

34.2 The Purchaser warrants that the Purchaser is relying entirely upon the Purchaser's own enquiries relating to the Lot, the Building and the Scheme.

34.3 Without limiting clause 34.2, the Purchaser warrants that neither the Vendor nor anyone on behalf of the Vendor has made any representation or warranty upon which the Purchaser relies as to the value of or the financial return to be derived from the Lot.

34.4 The Purchaser releases and indemnifies the Vendor from and against any claim, action or demand in respect of any loss, damage, expense, cost or charge incurred or suffered by the Purchaser arising out of or in connection with the matters in clauses 34.1 and 34.3.

35. Rectification Works

35.1 The Purchaser acknowledges that, unless clause 27 applies, any Right of the Purchaser to require rectification of defects of workmanship or materials in respect of the Building Works is restricted to the Purchaser's Rights under the Purchaser's Fixed Price Construction Contract and Rights exercisable by the Body Corporate on behalf of the Purchaser under the Body Corporate's Contract or the BCCMA.

35.2 Any dispute about whether a defect referred to in this clause has been remedied will be determined in accordance with the terms of the Purchaser's Fixed Price Construction Contract.

36. Attorney and Proxy

36.1 Until 1 year after the Scheme is established or changed (as referred to in sections 211(1) and 219 of the BCCMA), the Purchaser appoints the Vendor to be:

(1) the Purchaser's attorney and proxy to vote for the Purchaser at general meetings of the Body Corporate on the following issues:

(a) engaging a person as a body corporate manager or service contractor or authorising a person as a letting agent as disclosed in the Disclosure Statement;

(b) authorising a service contractor or letting agent to occupy a part of the common property, the details of which authorisation are disclosed in this Contract and the Disclosure Statement;

(c) consenting to the recording of a new community

- management statement for the Scheme to include a by-law disclosed in the Disclosure Statement;
- (d) voting in favour of any motion (and use all reasonable endeavours to ensure that the Purchaser's financier votes in favour of any motion) for a resolution of the Body Corporate to implement or give effect to any Development Documents to which the Body Corporate is a party, or other agreement or arrangement deemed necessary by the Vendor for completion of the Building Works or the operation of the Scheme;
- (e) voting against any motion (and use all reasonable endeavours to ensure that any Purchaser's financier of the Lot votes against any motion) for a resolution of the Body Corporate which, if passed, would delay or prevent implementation of the things or matters referred to in clause 36.1(1)(d);
- (f) any issue described in the statement under section 219 of the BCCMA contained in the Disclosure Statement;
- (2) the Purchaser's attorney for the purpose of:
- (a) executing any reallocation agreement in respect of exclusive use Rights granted over common property for the Scheme or body corporate assets;
- (b) signing any document which the Purchaser is Obligated to do under this Contract but has not done; or
- (c) signing any document which is necessary, or would help, to give effect to any Right or

- power given to the Vendor under this Contract; and
- (d) executing any consent, plan or other document in connection with all things necessary to effect any reconfiguration of any lot in the Building, including any reconfiguration of Scheme land.
- 36.2 The Purchaser must not appoint a company nominee or vote (or allow any person to vote for the Purchaser) at a general meeting of the Body Corporate without the Vendor's written consent.
- 36.3 If requested by the Vendor, the Purchaser must execute any further deed or a proxy in the approved form required to give effect to the appointments in this clause 36.
- 36.4 The Purchaser need only give a proxy to the Vendor in respect of any specified meeting of the Body Corporate.
- 36.5 This clause 36 operates as a deed.
- 36.6 If the Purchaser sells or transfers ownership of the Lot while the power of attorney and proxy in clause 36.1 is still in force, the Purchaser must have the transferee sign a deed in which the transferee:
- (1) gives the Vendor a power of attorney in the same terms as clause 36.1;
- (2) gives the Vendor a proxy in the same terms as clause 36.1 and in the approved form under the BCCMA; and
- (3) undertakes to comply with the continuing Obligations and restrictions on the Purchaser under this Contract and any other documentation disclosed by the Vendor in this Contract or the Disclosure Statement.
- 36.7 A deed of covenant, power of attorney and proxy under clause 36.6 must be prepared by the Vendor's Solicitor at the Purchaser's cost.
- 36.8 The Purchaser acknowledges that failure to comply with clause 36.6 may affect the Vendor's ability to complete the development

of the Scheme or sell all the lots in the Scheme.

36.9 The Purchaser must not:

- (1) do anything which would prevent the Purchaser being entitled to vote in respect of a motion for the resolution of the Body Corporate;
- (2) revoke the proxy given under this clause 36 (except at the request of the Vendor);
- (3) do anything which may invalidate or make the proxy given under this clause 36 incapable of use;
- (4) procure or request any person to do anything which may delay or prevent the implementation of or giving effect to any of the matters referred to in this clause and the Vendor's exercise of its Rights under this clause or the other provisions of this Contract or any Development Document.

36.10 The Purchaser ratifies anything done by the Vendor as attorney in accordance with clause 36.1. If required by the Vendor, the Purchaser must execute any deed or form of appointment necessary to effect the appointment in clause 36.1.

37. Lodgement by Purchaser of Caveat

37.1 The Purchaser is not entitled to lodge or maintain a caveat on any of the certificates of title issued or to issue in respect of any part of the Building Site (including any part of the parcel).

38. Purchaser's Default

38.1 The Purchaser acknowledges that a failure on the part of the Purchaser to comply with the Purchaser's Fixed Price Construction Contract (where the Purchaser fails to remedy the non-compliance) or another Development Document after Completion is an essential default under this Contract.

38.2 The Purchaser must execute the Call Option when it executes this Contract.

38.3 If the Purchaser is in default under this Contract as specified in clause 38.1 then, in addition to any other Rights of the Vendor under this Contract, the Vendor or its nominee may exercise the Call Option.

38.4 The Purchaser acknowledges that the grant of the Call Option and the Vendor's Right to exercise the Call Option reflects the legitimate interest of Owners who obtain title to lots in the Building under contracts with the Vendor (on similar terms to this Contract) in completion of the Building Works and the implementation of the Building Concept. The Purchaser warrants to the Vendor that it understands that the Vendor's Right to require a transfer of title to the Lot:

- (1) assists the Vendor to ensure the Purchaser's Building Works are completed by the Builder if the Purchaser unlawfully refuses to comply with its Obligations; and
- (2) provides an assurance to Owners that a failure by the Purchaser to comply with the Purchaser's Fixed Price Construction Contract will not materially adversely affect the ability of the Builder or Owners to comply with Fixed Price Construction Contracts.

Nothing in this clause 38.4 obliges the Vendor to exercise its Rights under the Call Option.

38.5 If the Vendor resells the Lot following a default under this Contract by the Purchaser or resells after a transfer of title has been made after exercise of the Call Option, the Vendor may vary or terminate any contract of sale and sell at any auction or by private contract. In the case of a resale the Purchaser must pay any deficiency in price on resale together with the costs of:

- (1) repossession, if required;
- (2) the sale under this Contract;
- (3) the resale;
- (4) any failed attempt to resell; and
- (5) Outgoings for the Lot that would have been payable by the Purchaser if

Completion of this Contract had taken place.

38.6 Amounts payable under clause 38.5 may be recovered as liquidated damages. Any profit on a resale belongs to the Vendor.

38.7 The Purchaser indemnifies the Vendor against any loss that the Vendor suffers as a result of the Purchaser's default under this Contract or a Development Document.

39. Termination by Vendor

39.1 Without limiting any other Rights of the Vendor, the Vendor may terminate this Contract by notice to the Purchaser if:

- (1) the Purchaser breaches this Contract and fails to comply with the notice requiring rectification of the breach,
- (2) the Purchaser claims compensation (and does not withdraw that claim within 7 days of being requested to do so by the Vendor) or refuses to perform any of the Purchaser's Obligations under this Contract because of:
 - (a) any of the Vendor's Rights specified in clause 8.2;
 - (b) the exercise of the Vendor's Rights under clause 27;
 - (c) changes referred to in clause 31; and
 - (d) any alleged failure by the Vendor to comply with clause 8;
- (3) Development Approvals are or have been issued on conditions that are not satisfactory to the Vendor or any Development Approvals required to carry out the Building Works and development of the Building Site are revoked or otherwise amended in a manner that is unsatisfactory to the Vendor;
- (4) the Vendor is unable or unwilling to comply with any Requirement in connection with the Scheme, the Building, the Amenities or the Lot;

(5) the Completion Preconditions are not satisfied by the Scheme Date or the Vendor otherwise makes a determination as provided for under clause 13.2;

(6) as a result of an event or events outside the control of the Vendor, the Vendor, in its sole discretion, determines that the Building Works are no longer economically viable or are not otherwise able to be undertaken on the terms of the Development Documents;

(7) without limitation to clause 39.1(6), the Vendor determines that commencement of the Building Works cannot be achieved on or before the Fixed Price Date and the Building Works are not able to be undertaken on the terms of the Development Documents, including as to pricing of Building Works under Fixed Price Construction Contracts;

(8) circumstances arise which entitle the Construction Auditor to issue an Essential Default Notice under the Construction Covenants before Completion of this Contract;

(9) where clause 27 applies, the Building or the Lot is destroyed or substantially damaged before the Possession Date;

(10) Remediation is a Requirement or condition of any approval and the Vendor in its absolute discretion is not prepared to undertake the work necessary to satisfy the Requirement or condition;

(11) the Purchaser is a natural person and:

- (a) dies; or
- (b) becomes bankrupt;

(12) the Purchaser is a corporation and:

- (a) becomes an externally-administered body corporate under the *Corporations Act 2001*;

- (b) a controller (as defined in section 9 of the *Corporations Act 2001*) is appointed of any of the Purchaser's property or any steps are taken for the appointment of that person;
- (c) is taken to have failed to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001*; or

(13) the Guarantor does not give the guarantee referred to in clause 42.

39.2 If the Vendor terminates the Contract under this clause 39, then:

- (1) all money paid by the Purchaser to the Vendor under this Contract must be refunded;
- (2) all Development Documents signed by the Purchaser will be automatically terminated by the Vendor (where the Vendor is a party) or otherwise on their terms; and
- (3) subject to clause 39.3, neither party has any claim against the other.

39.3 Termination under clause 39.1 does not prejudice any Right that the Vendor may have for breach of this Contract by the Purchaser before termination by the Vendor.

39.4 Without limiting clause 39.2(3), the Purchaser acknowledges that on termination the Purchaser has no claim against the Vendor or the Construction Auditor for:

- (1) legal or other costs incurred by it in seeking professional advice about the terms of this Contract, Development Documents and the arrangements under them;
- (2) in respect of any deposit monies paid under this Contract and any loss of opportunity for the application or investment of those deposit monies;
- (3) in respect of any other loss of opportunity arising out of the termination of this Contract;

and the Purchaser releases the Vendor and the Construction Auditor from any such claim.

40. Termination by Purchaser

40.1 The Purchaser may terminate this Contract by notice in writing to the Vendor:

- (1) if the Lot is reduced in area by more than 5% as referred to in clause 31.3(7), provided the Purchaser gives the Vendor written notice that it terminates the Contract within 21 days from the date it receives the Vendor's notification under clause 31.5; or
- (2) if the Completion Preconditions are not satisfied by the Scheme Date.

40.2 If the Purchaser terminates the Contract under this clause 40, then all money paid by the Purchaser must be refunded and subject to clause 40.3, neither party has any claim against the other.

40.3 Termination under clause 40.1 does not prejudice any Right that the Purchaser may have for breach of this Contract by the Vendor before termination by the Purchaser.

40.4 Termination under clause 40.1 does not prejudice any Right that the Vendor may have for breach of this Contract by the Purchaser before termination by the Purchaser.

41. Expert Determination

41.1 If a matter is to be determined by an expert under a clause in this Contract, a party may refer that matter for determination by an expert under this clause within 21 days of the dispute about the matter arising.

41.2 A party who wishes to refer a matter for determination under this clause must do so by giving notice to the other party in which it states the matter or matters which it wishes to refer for determination.

41.3 The expert must determine the matter under this clause within 21 days of it being referred (failing which each party may commence or institute any other action in respect of the matter).

41.4 When a matter is referred to an expert for determination under this clause, each of the parties must:

- (1) use its best endeavours to make available to the expert all facts and circumstances which the expert may need to know in order to resolve the deadlock; and
- (2) give a copy of any written submission it makes to the expert to the other party at the same time it gives that submission to the expert.

41.5 The expert must determine the matter and inform the parties of the result of the expert's determination within 21 days of the date of submission of the matter for determination, or within any longer period which the expert reasonably determines (but not later than 3 months after the date of submission).

41.6 The expert acts as an expert and not as an arbitrator. The expert's decision is final and binding on the parties. The expert must give a written statement of reasons for the decision to all parties. The expert must act fairly and reasonably under this clause.

41.7 The expert may decide who must pay the costs and expenses arising out of the reference of the matter issue to the expert, including the expert's reasonable costs and expenses. If the expert does not make a decision about costs and expenses, the parties must equally share the costs and expenses.

41.8 A party must not, except as permitted by clause 41.9, commence any process in a court or seek to resolve a matter by any other means under this Contract (except by negotiation or in accordance with this clause) while the determination of the matter under this clause is in process.

41.9 This clause 41.9 does not prevent a party from commencing court proceedings to obtain urgent declaratory or injunctive relief or exercising any statutory Rights which cannot be excluded by this Contract.

41.10 Each party must continue to perform the terms of this Contract despite the reference of the matter to the expert under this clause 41. A party cannot exercise any Right to terminate this Contract, if that Right arises

out of, is related to, or concerns the matter referred for determination under this clause 41.

41.11 Reference of a matter under this clause 41 may take place simultaneously with the running of a period of notice given under any notice of default issued by the Vendor under clause 38.

42. Guarantee and Indemnity

42.1 This clause applies if the Purchaser is a company.

42.2 The Purchaser must procure the directors or principal shareholders of the Purchaser (as required by the Vendor) to sign the guarantee and indemnity in Annexure B.

42.3 The guarantee and indemnity must be executed and delivered to the Vendor at or prior to the exchange of this Contract.

43. Assignment Rights

43.1 The Purchaser may not assign the benefit of this Contract or sell the Lot before the Completion Date without the prior written consent of the Vendor.

43.2 Without limitation to clause 43.1, if the Purchaser enters into a contract for the sale of the Lot with a third party:

- (1) the Vendor is not obliged to delay the Completion Date to accommodate the requirements of the purchaser under that contract;
- (2) the Vendor may impose conditions on the sale to a third party in giving its consent under clause 43.1;
- (3) the Purchaser must pay the Vendor's reasonable costs, including legal costs, in connection with giving its consent under clause 43.1.

43.3 If the Purchaser, after the Completion Date enters into a contract for the sale of the Lot with a third party the Purchaser must observe the terms and conditions of the Development Documents, including the Purchaser's Fixed Price Construction Contract in relation to any conditions imposed upon the Purchaser's

Right to transfer title to its Lot during the course of the construction of the Purchaser's Building Works. The Purchaser acknowledges that a failure on the Purchaser's part to comply with any such condition is a breach of this Contract for which the Vendor may, without limitation, exercise its Rights to require a transfer of the title under clause 38.1.

43.4 The Vendor may:

- (1) transfer the Building Site or any part of it;
- (2) transfer its interest in any contract under which the Vendor buys the Building Site or this Contract and if it does so then, the Vendor must ensure the transferee signs a covenant under which the transferee agree to comply with the terms of this Contract as if the transferee was the Vendor. The deed must be prepared by the Vendor's lawyer at the Vendor's cost.

43.5 The Purchaser irrevocably appoints the Vendor's transferee to be its attorney on the same terms and conditions as clause 36. A deed of covenant and power of attorney must be prepared by the Vendor's lawyers at the Vendor's cost.

43.6 The Vendor may deal with the Building Site prior to the Completion Date and, without limitation, may mortgage charge or give other securities over the Building Site and the Purchaser must not object to any dealings by the Vendor.

44. Miscellaneous

44.1 The Purchaser warrants to the Vendor that it was not introduced directly or indirectly to either the Vendor or the Lot by any person or agent other than the Vendor's agent named in this Contract.

44.2 If a claim is brought against the Vendor as a result of any matter which would amount to a breach of warranty under clause 44.1, the Purchaser indemnifies the Vendor against any claim including all legal costs, both on a party and party and solicitor and client basis.

44.3 The Vendor may, until it has sold all of the Lots in the Scheme:

- (1) conduct selling and leasing activities in and about the Building and the Scheme;
- (2) place in and about the Building and the Scheme, including on the Common Property but not on the Lot, signs in connection with those selling and leasing activities;
- (3) have display Lots in the Building; and
- (4) place in and about the Building (including on the parcel but not the Lot) offices and other facilities for sales people (subject to obtaining any required approval of the Body Corporate).

44.4 On the Completion Date:

- (1) if a mortgage or caveat is noted on the folio of the register for the Lot, the Purchaser must accept a discharge of that mortgage or a withdrawal of that caveat over the Lot;
- (2) if a caveat is lodged by or on behalf of the Purchaser and is noted on the folio of the Register for the Lot, any assignee of the Purchaser's interest under this Contract or any person claiming through or under the Purchaser, must perform this Contract despite that caveat.

44.5 A discharge of mortgage or withdrawal of caveat tendered under clause 44.4 must be executed and in registrable form and the registration fees payable (other than in connection with a caveat lodged by the Purchaser, any assignee of the Purchaser or any person claiming through or under the Purchaser) must be allowed by the Vendor to the Purchaser.

44.6 The Purchaser irrevocably authorises the Vendor to complete, fill in any blanks, amend and date any Development Documents which the Purchaser has signed so that the Development Documents accurately record the date on which they were executed and the agreed terms and conditions of those Development Documents.

45. Continuing Obligations

- 45.1 Each Obligation, Right or warranty that is capable of having future operation continues in force although this Contract has otherwise been fully performed.
- 45.2 Without limitation, any clause that relates to a Right, Obligation or warranty to be exercised, performed, given or operating after Completion continues in full force after Completion.

46. Foreign Investment

- 46.1 The Purchaser warrants that the Purchaser is not a foreign person for the purposes of the *Foreign Acquisitions and Takeovers Act 1975* ("FATA").
- 46.2 If, despite clause 46.1, the Purchaser is a foreign person for the purposes of FATA:
- (1) the Purchaser must give the Vendor any information the Vendor needs when requested so that the Vendor can comply with any approval under FATA;
 - (2) if the Vendor does not have an approval under regulation 3(e) of the FATA regulations and the Purchaser's acquisition of the Lot requires approval under FATA, this Contract is conditional on the Purchaser obtaining the approval for the acquisition under FATA within 90 days of the Contract Date.

47. Severability

- 47.1 If anything in this Contract is unenforceable, illegal or void then it is severed and the rest of this Contract remains in force.

48. Variation

- 48.1 An amendment or variation to this Contract is not effective unless it is in writing and signed by the parties.

49. Waiver

- 49.1 A party's failure or delay to exercise a power or Right does not operate as a waiver of that power or Right.
- 49.2 The exercise of a power or Right does not preclude either its exercise in the future or the exercise of any other power or Right.
- 49.3 A waiver is not effective unless it is in writing.
- 49.4 Waiver of a power or Right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

50. Stamp Duty

- 50.1 The Purchaser must pay the stamp duty on this Contract. Apart from that, each party must pay its own costs.

51. Confidentiality

- 51.1 The Purchaser acknowledges that the existence and terms of, and the identity of the parties to, this Contract and the documents referred to or disclosed by the Vendor in it, are strictly confidential ("**Confidential Information**").
- 51.2 Except as stated in this Contract, the Purchaser must not and must not permit any of its officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, other than its professional advisers or as required by law, without the prior written consent of the Vendor.
- 51.3 The Purchaser must provide the Vendor with details of any person to whom disclosure of Confidential Information is proposed to be made prior to its disclosure.
- 51.4 This clause 51:
- (1) operates for the benefit of the Vendor; and
 - (2) continues despite the termination of this Contract or Completion.

52. Governing Law

- 52.1 The law of Queensland governs this Contract.
- 52.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.

53. Covenant

53.1 In this clause 53:

- (1) **"Covenant"** means a covenant in favour of Brisbane City Council under which the Lot (and other lots in the Scheme) are required to be used for affordable housing on the terms contained in the Management Plan; and
- (2) **"Management Plan"** means the management plan in Part A of the Disclosure Statement describing the conditions of the Covenant which require the Lot (and other lots in the Scheme) to be used for affordable housing.

53.2 The Purchaser acknowledges that the Covenant and the Management Plan will burden the Lot at Completion, and that it takes title to the Lot subject to the Covenant and Management Plan.

53.3 The Purchaser must not object to the Vendor's registration of the Covenant and the Management Plan (which are required to be registered over the Lot under the terms of the Development Approval), and must provide the Vendor with all assistance reasonably necessary to ensure registration.

54. IAM Lease

54.1 In this clause 54, **"IAM Lease"** means the lease to be registered over the Lot with Income Asset Management Pty Ltd ACN 109 333 753 as lessee for a period of 10 years (with two 10 year options), a copy of which is annexed to this Contract at Annexure E.

54.2 The Purchaser acknowledges that, on surrender of the Construction Lease by the Builder, the IAM Lease must be registered on the title of the Lot.

54.3 The Purchaser:

- (1) must sign and return the IAM Lease to the Vendor on execution of this Contract;
- (2) must, on the Completion Date, give the Vendor a registrable mortgagee's consent, by any mortgagee that will have a mortgage registered on the title of the Lot, consenting to the registration of the IAM Lease;
- (3) must, on the Completion Date, provide the Vendor with a bank cheque for the amount of any registration and stamp duty fees to allow registration of the IAM Lease;
- (4) irrevocably authorises the Vendor to:
- (a) date and complete the IAM Lease where necessary to allow its registration after the surrender of the Construction Lease including the insertion of commencement and termination dates; and
- (b) register the IAM Lease over the Purchaser's Lot after the Completion Date.

54.4 The Purchaser must not object to registration of the IAM Lease and must provide the Vendor with all assistance reasonably necessary to permit its registration.

EXECUTED as an agreement.

Vendor's Execution

The common seal of
Affordable Housing Association Inc
was affixed in accordance with its
constitution in the presence of:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

Purchaser's Execution

.....
Signature of Purchaser

.....
Signature of Purchaser

.....
Signature of Witness

.....
Signature of Witness

Guarantor's Execution

.....
Signature of Guarantor

.....
Signature of Guarantor

.....
Signature of Witness

.....
Signature of Witness

Deposit Holder

The Deposit Holder acknowledges receiving the Deposit and agrees to hold it as provided in this Contract.

.....
Signature of Deposit Holder

Annexure A
Entitlement Payment Deed

Annexure B Guarantee

Parties «F6» «F8»
 of «F10»
 ("Vendor")

and «F41»
 of «F42» and
 «F43»
 of «F44»
 (each of them "Guarantor")

1. Guarantee and Indemnity

1.1 Consideration

The Guarantor has requested the Vendor to enter into this Contract with the Purchaser and the Vendor does so in consideration of the Guarantor giving this guarantee and indemnity by signing this Contract.

1.2 Guarantee

The Guarantor guarantees to the Vendor prompt performance of all of the obligations of the Purchaser contained or implied in this Contract. If the obligation is to pay money, the Vendor may recover the money from the Guarantor as a liquidated debt.

1.3 Indemnity

In addition to the Guarantor's liability under clause 1.2, the Guarantor indemnifies the Vendor against loss incurred because the Purchaser is not bound by some or all of its obligations under this Contract.

1.4 Matters Not Affecting Guarantor's Liability

The Guarantor's liability under clauses 1.1 and 1.3 is not affected by:

- (1) the granting of time, forbearance or other concession by the Vendor to the Purchaser or any Guarantor;
- (2) an absolute or partial release of the Purchaser or any Guarantor or a compromise with the Purchaser or any Guarantor;
- (3) a variation of this Contract;
- (4) an assignment of this Contract by the Purchaser;
- (5) the termination of this Contract;
- (6) the fact that this Contract is wholly or partially void, voidable or unenforceable;
- (7) the non-execution of this Contract by 1 or more of the persons named as Guarantor or the unenforceability of the guarantee or indemnity against 1 or more of the Guarantors; or

(8) the exercise or purported exercise by the Vendor of its rights under this Contract.

1.5 Payment Later Avoided

The Guarantor's liability is not discharged by a payment to the Vendor which is later avoided by law. If that happens, the Vendor, the Purchaser and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.

1.6 Indemnity on Disclaimer

If a liquidator or trustee in bankruptcy disclaims this Contract, the Guarantor indemnifies the Vendor against any resulting loss.

1.7 Guarantor Not to Prove in Liquidation or Bankruptcy

Until the Vendor has received all money payable to it by the Purchaser:

- (1) the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit of creditors; and
- (2) the Guarantor must hold any claim it has and any dividend it receives on trust for the Vendor.

1.8 Guarantee to Continue on Assignment of Rights

If the Vendor assigns its rights under this Contract, the benefit of the guarantee and indemnity in this clause 1 extends to the assignee and continues concurrently for the benefit of the Vendor regardless of the assignment unless the Vendor releases the Guarantor in writing.

EXECUTED as a deed.

Guarantor - «F41»

Witness

Guarantor - «F43»

Witness

Annexure C
Body Corporate Construction Lease

**Annexure D
Call Option**

**Annexure E
IAM Lease**