

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N96721 Claude Joseph Ceccomancini and Sandra Kaye Ceccomancini ("**Ceccomancini**")
N96722 of 321 Arundel Road, Keilor, Victoria 3036

- (b) Short description of business carried on by that person:
(Refer to direction 3)

- Ceccomancini does not carry on a business but as the owner of the Development land, they are involved in the proposed conduct.

- (c) Address in Australia for service of documents on that person:

c/- Derrick Toh, Septimus Jones Lee
PO Box 258, Collins Street West, Victoria 8007.

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Contracts for the sale of house and land packaged residential lots at 305 Harvest Home Road, Epping North, Victoria 3076 being the land described in Certificate of Title Volume 11130 Folio 692, with an area of 2.425 hectares ("Development").

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Ceccomancini are the registered proprietors of the Development land.

Ceccomancini has entered into a development agreement with Metricon Homes Pty Ltd ("Metricon") which gives Metricon the exclusive right to construct residential town houses in the Development, which is to be subdivided in stages and sold to consumers as a house and land package. It is proposed that there will be approximately 112 town house lots in total in the Development ("proposed conduct").

Under the proposed conduct, a person entering into a contract with Ceccomancini to purchase land in the Development will do so on the basis that the purchaser is also required to enter into a building contract with Metricon to construct a home and improvements on the lot in accordance with a prescribed building contract.

A copy of the proposed contract of sale is attached as "**Annexure A**" and a copy of the prescribed building contract is attached as "**Annexure B**".

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Purchasers of residential lots that wish to buy house and land within the Development.

- (b) Number of those persons:

- (i) At present time:

There are no purchasers at the present time.

- (ii) Estimated within the next year:
(Refer to direction 6)

Ceccomancini hopes to enter into approximately 60 to 112 Contracts of Sale of the Land with various purchasers which are conditional upon the purchasers entering into a Building Contract with Metricon .

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

The Development consists entirely of semi-detached townhouses. By utilising the proposed conduct, purchasers will benefit as:

- they will receive the benefit of obtaining a new home in a residential estate for a fixed price.

- the total cost to the purchaser is potentially lower than other developments because Metricon does not incur duties and taxes which would have occurred if a builder purchased the land and on-sold it, and subsequently passed on to the purchaser.
- the overall standard and consistency of design within each block of town houses within the Development is achieved, therefore preserving the resale value of each town house development.
- the design of all townhouses within a block is consistent and integrated, which provides economies of scale and practical consistency and again lowers the cost for purchasers to obtaining a new home.
- a consistent high standard will be achieved across the board, Metricon has a proven track record of providing industry leading quality of workmanship.
- by having party walls between the town house lots, the cost of each town house is reduced as compared to a free standing house. However the party walls for the block of townhouses will have to be constructed simultaneously, and the only practical way of achieving this is to have one builder for the entire block.
- by ensuring that the same builder constructs all the town houses within a block there are also economies of scale which will further reduce the cost of construction. There are obvious economies of scale in the supply of materials, because a supplier can provide the materials for all the town houses in the block, reducing delivery fees, and allowing the builder to take advantage of discounts offered for supply of larger quantities of material.
- there are economies of scale in the building in that tradesmen performing electrical, plumbing, carpentry or fit-out services can perform the work for the entire block as one job, instead of treating each dwelling as a separate job.
- there is a saving in compliance costs as inspections can be carried out for all the town houses within the block at the same time. Indeed, in the case of construction of the party walls the inspections have to be carried out at the same time.

(b) Facts and evidence relied upon in support of these claims:

Refer Annexures A and B.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The affected market consists of the purchasers of residential dwellings in the area identified as the North Growth Corridor by the Victorian Growth Areas Authority (<http://www.gaa.vic.gov.au/wp-content/Assets/Files/Growth%20Corridor%20Plans%20ON%20SCREEN.pdf>), which is where the Development is also situated within, either as an investor or owner occupier ("affected market").

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

- The applicants consider that there would be little or no detriment to the public at large as a result of the proposed conduct in the affected market.
- The applicants do not consider that the proposed conduct would negatively affect prices of house and land packages in the affected market

- (b) Facts and evidence relevant to these detriments:

- There is no obligation on a purchaser to purchase land in the Development, in fact there are several residential estates located in the general vicinity of the Development which do not require purchasers to use Metricon to construct dwellings.
- The proposed conduct only affects purchasers who wish to purchase in the Development.
- The proposed conduct would not affect or restrict the choice of consumers as there are many other residential estates in the affected market offering house and land packages, eg Aurora Estate on Hume Highway. There are many other residential estates in the North Growth Corridor of Melbourne, offering a range of low and medium density lots, free standing houses or semi-detached townhouses for both owner occupier and investors. There are also a large range of builders operating in the North Growth Corridor of Melbourne who construct free standing houses and/or semi-detached townhouses.
- The proposed conduct only affects an insignificant percentage of the affected market. As an example, based on the Census of Population and Housing 2011 (<http://profile.id.com.au/whittlesea/dwellings>; downloaded 21/03/2013) the Development would consist of only 1.9% of medium density housing available and 0.2% of total housing in the City of Whittlesea. The City of Whittlesea only constitutes part of the North Growth Corridor as discussed earlier.
- Purchasers will avoid the uncertainty of overall costs for the construction of a home on their lot by purchasing under a house and land package

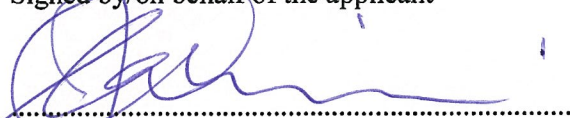
7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

c/- Derrick Toh
Septimus Jones Lee
PO Box 258, Collins Street West, Victoria 8007
Tel: (03) 9613 6555
Email: dtoh@sjl.com.au

Dated... 22/4/2013

Signed by/on behalf of the applicant

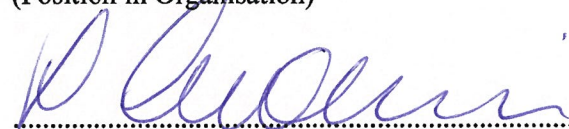


(Signature)

Charles Ceccomandini
(Full Name)

(Organisation)

Proprietor
(Position in Organisation)



(Signature)

Sandra Kaye Ceccomandini
(Full Name)

(Organisation)

Proprietor
(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ANNEXURE A

CONTRACT OF SALE OF REAL ESTATE

IMPORTANT NOTICE TO PURCHASERS OF LAND PRIOR TO APPROVAL OF PLAN

Subject to the deposit moneys payable under the Contract not exceeding 10 per cent of the purchase price of the lot, the Purchaser may negotiate with the Vendor about the amount of deposit money payable under the contract.

A substantial period of time may elapse between the day on which the Purchaser signs the contract for sale and the day on which the Purchaser becomes the registered proprietor of the lot.

The value of the lot may change between the day on which the Purchaser signs the contract for sale of that lot and the day on which the Purchaser becomes the registered proprietor.

Signed by the Purchasers: _____

Dated: / /2012

CONTRACT OF SALE OF REAL ESTATE

Part 1 of the form of contract published by the Law Institute of Victoria Limited and The Real Estate Institute of Victoria Ltd

Property address:

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

The terms of this contract are contained in the –

- particulars of sale; and
 - special conditions, if any; and
 - general conditions in Form 2 of the Estate Agents (Contracts) Regulations 2008; and
 - Vendor's Statement required by Section 32(1) of the Sale of Land Act 1962, as attached
- and in that order of priority.

SIGNING OF THIS CONTRACT

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

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

The authority of a person signing –

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

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract and the important notice to the Purchasers attached to the front page of this contract.

SIGNED BY THE PURCHASER:

....., on/...../20.....

Print name(s) of person(s) signing:

State nature of authority, if applicable:

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

SIGNED BY THE VENDOR:

....., on/...../20.....

Print name(s) of person(s) signing:

State nature of authority, if applicable:

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

IMPORTANT NOTICE TO PURCHASERS

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

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

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

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

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

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

*This contract is approved by the Law Institute of Victoria Limited, a professional association within the meaning of the Legal Profession Act 2004, under section 53A of the Estate Agents Act 1980.

PARTICULARS OF SALE

VENDOR'S ESTATE AGENT

Name:

Address:

Email:

Tel:

Mob:

Fax:

Ref:

VENDOR

Name: CLAUDE JOSEPH CECCOMANCINI and SANDRA KAYE CECCOMANCINI

Address: 321 Arundel Road Keilor

VENDOR'S LEGAL PRACTITIONER OR CONVEYANCER

Name: MESSRS. COMITO IACOVINO & CO.

Address: 660 High Street Thornbury

Email:

Tel: 9480 1544

Fax: 9480 3964

DX: 97101 THORNBURY

Ref: 120382.AJI.AT

PURCHASER

Name:

Address:

PURCHASER'S LEGAL PRACTITIONER OR CONVEYANCER

Name:

Address:

Email:

Tel:

Fax:

DX:

Ref:

LAND (general conditions 3 and 9)

The land is -

described in the table below —

Certificate of Title reference	being lot	On proposed plan of subdivision No.
Part of the Land in Certificate of Title Volume 11130 Folio 692		

OR

described in the copy title(s) and plan(s) attached to the Vendor's Statement if no title or plan references are recorded in the table above or if the land is general law land.

The land includes all improvements and fixtures.

PROPERTY ADDRESS

The property to be located at and known as Lot:

Epping

PAYMENT (general condition 11)

Price \$

Deposit \$

Balance \$

The later of the settlement date referred to herein or 14 days after the Vendor gives notice in writing to the Purchaser of registration of the Plan of Subdivision

GST (general condition 13)

The price includes GST (if any) unless the words 'plus GST' appear in this box

If this sale is a sale of a 'farming business' or 'going concern' then add the words 'farming business' or 'going concern' in this box

If the margin scheme will be used to calculate GST then add the words 'margin scheme' in this box

SETTLEMENT (general condition 10)

is due on / /20

or 14 days after the vendor gives notice in writing to the purchaser of registration of the plan of subdivision which ever is the later

LEASE (general condition 1.1)

At settlement the purchaser is entitled to vacant possession of the property unless the words 'subject to lease' appear in this box in which case refer to general condition 1.1.

NIL

If 'subject to lease' then particulars of the lease are*:
(*only complete the one that applies. Check tenancy agreement/lease before completing details)

*residential tenancy agreement for a fixed term ending on /20

OR

*periodic residential tenancy agreement determinable by notice

OR

*lease for a term ending on /20 with [.....] options to renew,
each of [.....] years.

TERMS CONTRACT (general condition 23)

If this contract is intended to be a terms contract within the meaning of the Sale of Land Act 1962 then add the words 'terms contract' in this box and refer to general condition 23 and add any further provisions by way of special conditions.

NOT APPLICABLE

LOAN (general condition 14)

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

Lender:

Loan amount: \$ Approval date: /20

SCHEDULE

Encumbrances –

All registered and unregistered encumbrances, easements, covenants and restrictions including:

- (a) any disclosed in the Vendor's Statement;
- (b) implied easements;
- (c) any created by Section 98 of the Transfer of Land Act or implied under the Subdivision Act;
- (d) any referred to or described in the Plan of Subdivision
- (e) any contemplated by the Planning Permit and any other planning permit relating to the Site or required by any Authority including any conditions which may be imposed in connection with any Application including any agreement entered into or to be entered into under section 173 of the Planning and Environment Act 1987;
- (f) any vested in or claimed by any Authority
- (g) any required or contemplated by this contract; and

SPECIAL CONDITIONS

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

SPECIAL CONDITIONS

Note: It is recommended that when adding special conditions:

- each special condition is numbered;
- the parties initial beside each special condition;
- a line is drawn through any blank space remaining on this page; and
- attach additional pages if there is not enough space.

If the contract is subject to 'special conditions' then particulars of the Special Conditions are:

AS ATTACHED

SPECIAL CONDITIONS

1. LAND DESCRIPTION AND ENCROACHMENTS:

The Vendors do not warrant that the improvements purporting to be on the land are wholly on the land or that improvements of adjoining owners do not encroach on the land. The sale is subject to each encroachment (if any) which exists and the Purchaser is not entitled to make any objection requisition or claim for compensation in relation to it.

2. ACKNOWLEDGMENT OF SECTION 32:

The Purchaser acknowledges that prior to paying the deposit or signing this Contract or any agreement or document in respect of the sale hereby effected which is legally binding upon or intended legally to bind the Purchaser, the Purchaser has been given a copy of this Contract of Sale and a statement in writing containing the particulars required by Section 32 of the Sale of Land (Amendment) Act 1982.

3. RESTRICTIONS ON USE:

The land is sold subject to all applicable restrictions as to use and subject to the provisions of each applicable Order, Planning Scheme, Regulation and by-law made by any authority or body empowered by legislation to control the use of the land. Restrictions as to use do not constitute a defect in the Vendors' title or effect the validity of this Contract and the Purchaser shall not make any requisition or objection or claim any compensation from the Vendors in respect of such restrictions and the Purchaser is not entitled to rely upon any representation or statement made by the Vendors or their Agent in respect of use to which the property may be put unless the representation or statement is included in this Contract.

4. PLAN OF SUBDIVISION:

4.1 This Contract of Sale is conditional upon the Plan of Subdivision No. (subject to any alterations thereto as are hereinafter mentioned) being duly sealed by Council pursuant to the provisions of the Subdivisions Act and registered at the Office of Titles within 18 months from the date hereof PROVIDED ALWAYS that the Vendors reserve their right to make such alteration to the said Plan as may be demanded by Council or the Registrar of titles as prerequisites to the sealing and registration of the Plan but PROVIDED FURTHER that in the event of either Council or the Registrar of Titles requiring an amendment to the Schedule of Lot Entitlement and the Schedule of Lot Liability or either of those Schedules endorsed on the said Plan which shall have the effect of placing the Purchaser in materially adverse position to that envisaged by the Schedules presently endorsed on the said Plan then the Purchaser may elect to terminate this Contract of Sale within seven (7) days of the date of which he or his solicitor receives notice of the required amendment from the Vendors or the Solicitors for the Vendors.

4.2 In the event of the Registrar of Titles fails to register the said Plan within 18 months from the date hereof this Contract of Sale shall at the option of the Purchaser or the Vendors be at an end so long as the Purchaser or the Vendors have notified the other party or its Solicitors of his election in that regard after the expiration of such period and prior to the actual registration of the said Plan. In the event of any party so electing to avoid this Contract of Sale, pursuant to the right conferred by this Special Condition, all moneys paid by the Purchaser on

account of the purchase price shall be refunded to him in full, but the Purchaser shall not be entitled to any compensation from the Vendors in respect of any costs, fees or other expenses paid or incurred by the Purchaser in relation to or arising out of this transaction.

- 4.3 The Purchaser shall accept as identical the lot as hereinbefore described in the Lot bearing on the said Plan when registered. If the Lot on the said Plan shall at any time prior to registration be amended the Purchaser shall accept as identical with the said land the Lot on the said Plan as registered which shall occupy the same or approximately the same position as indicated in the copy plan annexed hereto. The Purchaser shall not be entitled to make any requisitions, objection or claim for compensation in respect of any of the following:-
- 4.3.1 Any minor variations between the Lot hereby sold as inspected by the Purchaser and the corresponding Lot as shown on the said Plan at registration.
 - 4.3.2 Any minor variations between the number, size or location of Lots or the common property as presently appearing on the said Plan and as shall appear on the said Plan when registered;
 - 4.3.3 Any minor alterations made prior to registration of the said Plan to the Schedule of Lot Entitlement and the Schedule of Lot liability or to either of them as presently shown on the said Plan in respect of any Unit.
- 4.4 The Purchaser agrees that it is not entitled to make any requisition, objection or claim compensation or rescind or determine this contract pursuant to this special condition 4, if any variation or alteration is not greater than a 5 per cent variation or alteration on the basis that the Purchaser agrees that such variation or alteration does not constitute a material variation or alteration.
- 4.5 Until such time as the said Plan of Subdivision has been so approved by the Registrar of Titles the Purchaser shall not lodge or cause or permit to be lodged on the Purchaser's behalf any caveat in respect of the Purchaser's interest in the land under this Contract and the Purchaser shall indemnify and keep indemnified the Vendors against any loss or damage which the Vendors may incur or suffer as a consequence of any breach by the Purchaser of this provision.

5. DEPOSIT

- 5.1 The deposit and all other moneys payable by the Purchaser shall be paid to the Agent or to the Vendor's Solicitors, Messrs. Comito, Iacovino & Co. to be held by such Solicitors on trust for the Purchaser until the said Plan of Subdivision has been approved by the Registrar of Titles. The said Solicitors may invest the said moneys in the name of the said solicitors on trust for the Vendor and the Purchaser with the National Australia Bank Thornbury Branch on fixed deposit. Any interest which may accrue on such moneys shall belong to the Purchaser either until the plan of subdivision has been approved by the Registrar of Titles and shall thereafter belong to the Vendor retrospectively from the date of the opening of the said account unless the Purchaser shall be entitled to a refund of the deposit and other moneys payable under this Contract in which case the interest shall belong to the Purchaser. In this clause "interest" shall mean the difference between all interest payable by the said bank on the said moneys deposited and all stamp duties Federal and State taxes payable on the said moneys and all other duties and imposts relating thereto. If so required the

Purchaser must give the Purchaser's tax file number either to the Vendors' Solicitors or to the Bank.

5.2 The Purchaser and the Vendor must not make any claim on the Vendors' Solicitors for any matter arising out of this special condition 5.

5.3 The Vendors may accept a bank guarantee or deposit bond from the Purchaser instead of the actual payment of the deposit or any part of the deposit. If the Vendors agree to accept a bank guarantee or deposit bond, the Purchaser must deliver it to the Vendors' Agent within three (3) business days after the day of sale for an amount equal to the deposit.

5.4 If the Purchaser complies with special condition 5.3, the Purchaser must pay the Deposit in cleared funds to the Vendors' solicitor on the first to occur of:

5.4.1 The Settlement Date;

5.4.2 The date that is 10 days before the Bank Guarantee or Deposit Bond expires;

5.4.3 Any earlier date on which:

(a) The Vendor would be entitled to the release of Deposit to it having regard to the provisions of this contract and section 27 of the Sale of Land Act 1962;

(b) The Vendor rescinds or terminates this contract for breach by the Purchaser; or

(c) The Bank Guarantee or Deposit Bond becomes ineffective.

When the Purchaser pays the Deposit, the Vendor will return the Bank Guarantee or Deposit Bond.

5.5 If the Purchaser breaches special condition 5.3, the Purchaser must immediately pay the Deposit in cleared funds to the Vendors' solicitor.

5.6 If the Purchaser breaches special condition 5.4 or 5.5 (time being of the essence), the Purchaser will be in default under this contract and without limiting the Vendors' rights the Vendors' solicitor (but in no circumstances the Vendors) is irrevocably authorised to draw of the Bank Guarantee or the Deposit Bond.

5.7 Any Bank Guarantee or Deposit Bond provided to the Vendors under this special condition 5 will be held on trust by the Vendors' solicitors for the Purchaser until registration of the Plan.

5.8 Any moneys paid by the Bank pursuant to special condition 5.6 must be dealt with by the Vendors' solicitor and in accordance with special condition 5.1 and otherwise the Sale of Land Act 1962. For the avoidance of doubt, this special condition takes precedence over anything else in this special condition.

6. OWNERS CORPORATION:

The Purchaser acknowledges and understands that in the event that upon registration by the Registrar of the Plan of Subdivision an Owners Corporation comes into effect then;

6.1 the Purchaser will become a member of the Owners Corporation after settlement;

- 6.2 the Purchaser will be required to pay the levies to the Owners Corporation;
- 6.3 The Owners Corporation shall adopt Owners Corporation Rules in accordance with the Owners Corporation Act 2006 (Vic.);
- 6.4 Until settlement the Purchaser authorizes the Vendors to adopt such Rules and Regulations as the Vendors may deem appropriate and shall be bound by the Owners Corporation Certificate Issued prior to settlement for adjustment and payment of all fees and outgoings of the Owners Corporation in accordance with the unit entitlement and liability of the Purchaser under the Plan of Subdivision.

7. EXISTING SERVICES AND UTILITIES:

The Purchaser acknowledges that the land is sold and the Purchaser shall take title thereto subject to all existing water, sewerage and drainage, gas, electricity, telephone or other installations, services and utilities (if any). The Purchaser shall not make any requisition, objection or claim for compensation in respect to any of the following:-

- 7.1 the nature or location of any such installations, services and utilities;
- 7.2 if any such service is a joint service with any other land or building;
- 7.3 if any such service for any other land or building or any parts or connections therefore pass through the land;
- 7.4 if any sewer or water main or connection passes through in or over the land;
- 7.5 if there is a manhole or vent on the land; or
- 7.6 if because of or arising out of such installations, services and utilities the land may be subject to or have the benefit of any rights or easements in respect of any such installations service or utility.

8. BUILDING CONTRACT

- 8.1 This contract is conditional upon the Purchaser entering into a valid and binding building contract with Metricon Homes Pty Ltd ("the builder") for the construction of a dwelling on the land in the form of the building contract attached hereto ("the building contract").
- 8.2 The Vendors must cause the builder to enter into the building contract with the Purchaser.
- 8.3 The Purchaser acknowledges that this contract is not a domestic building contract for the purposes of the Domestic Building Contracts Act 1995 (Vic).
- 8.4 The Purchaser acknowledges that the dwelling to be constructed on the land is to be constructed by the builder pursuant to the building contract.
- 8.5 The Purchaser agrees and acknowledges that settlement of the purchase of the land pursuant to this contract is not conditional upon the construction of a dwelling pursuant to the building contract.
- 8.6 If at any time prior to settlement the purchaser has not entered into a valid and binding building contract or the building contract has been terminated, rescinded, has otherwise come to an end, or become unenforceable, the Vendors may terminate this contract by notice in writing to the Purchaser.

- 8.7 If this contract is terminated pursuant to special condition 8.6 then the deposit must be refunded to the Purchaser less any applicable bank fees and charges.

SETTLEMENT

- 9.1 This contract is conditional upon the Vendor selling all properties within the stage by [insert the date which is 12 months after the release date of the stage] ("Conditional Sale Date"). If the vendor has not sold all properties within the stage by the Conditional Sale Date, then the Vendors may terminate this contract by notice in writing to the Purchaser.

In this special condition, "stage" means a tranche of properties, as determined by the builder from time to time, intended to be built upon contemporaneously, irrespective of whether that tranche of properties are all in the same plan of subdivision.

- 9.2 If this contract is terminated pursuant to special condition 9.1 then the deposit must be refunded to the Purchaser less any applicable bank fees and charges.
- 9.3 Settlement of this contract and payment of all monies due by the Purchaser shall occur upon the latest of the date set out in this contract and 14 days after the Purchaser has been notified that the plan of subdivision has been registered at the Office of Titles.

10. DEFAULT BY PURCHASER:

- 10.1 The Vendors gives notice to the Purchaser that in the event that the Purchaser fails to complete the purchase of the property on the due date under this contract, the Vendors will or may suffer the following losses and expenses which the Purchaser would be required to pay, in addition to interest chargeable on the balance of purchase monies:-

- a. The cost of obtaining bridging finance to complete the Vendors' purchase of another property, and interest charged on such bridging finance.
- b. Interest payable by the Vendors under any existing mortgage over the property calculated from the due date for settlement.
- c. Legal costs and expenses as between solicitor and client.
- d. Penalties payable by the Vendors through any delay in completion of the Vendors' purchase of another property.

- 10.2 Each sum due for payment by the Purchaser under this Contract but unpaid shall be a separate debt due to the Vendors which at their may sue for and recover the same in any court of competent jurisdiction.

11. PURCHASER'S WARRANTIES AS TO PURCHASER COMPANY:

The Purchaser agrees with and warrants to the Vendors that:-

- 11.1 (If the purchaser is a corporation) the Purchaser is a body corporate duly formed or incorporated within the Commonwealth of Australia;

- 11.2 the consent or licence of any person or body is not required to the Purchaser entering into this Contract or the purchase hereby effected; and
- 11.3 the Purchaser is duly empowered to enter into this contract and is not inhibited from entering into this contract by any reason whatsoever and, without limiting the generality of the foregoing, by reason of any trust, charge or undertaking.

12. WARRANTY BY SIGNATORY FOR PURCHASER COMPANY AND GUARANTEE:

- 12.1 If the purchaser is a corporation and if this contract has been signed by a person as a director for and on behalf of that corporation, that person hereby represents and warrants to the Vendors as an addition inducement to the Vendors to enter into this Contract, that he has authority pursuant to the Articles of Association of that corporation (or otherwise if that corporation is a foreign corporation) to bind that corporation to all the provisions contained in this contract.
- 12.2 A person wishing or purporting to execute this contract on behalf of or as attorney for a Purchaser shall first produce evidence satisfactory to the Vendors or the Vendors' Solicitors of his authority to do so.
- 12.3 If the within-named Purchaser is a company not listed on the first board of any Stock Exchange in Australia it agrees that it will at the cost of the Purchaser within seven (7) days of the date hereof procure and deliver to the Vendors or the Vendors' Solicitors a joint and several Guarantee and Indemnity of the obligations of the Purchaser under this Contract in the form attached hereto and duly executed by all of the Directors of the Purchaser. PROVIDED further that any representative of the Company who executes this contract shall simultaneously upon such execution execute the guarantee attached hereto.

13. JOINT AND SEVERAL OBLIGATIONS:

If there are more Purchasers than one, the obligations of the Purchaser under this Contract bind them jointly and severally.

14. OUTGOINGS:

- 14.1 All rates, taxes, assessments and other outgoings in respect of the land shall be paid by the Vendors and borne by the Purchaser as and from the date upon which the Purchaser becomes entitled to possession and the same shall if necessary be apportioned between the Vendors and the Purchaser and the balance paid or received as the case may require.
- 14.2 Such apportionment shall be of the actual amount charged, levied or assessed in respect of the land sold regardless of whether that is the only land of which the Vendors are the owners within the meaning of any statutory provisions and in calculating the apportionment of any statutory benefit available to either party shall be disregarded.
- 14.3 If the land sold is not separately rated, charged or assessed in respect of any such outgoings then they shall be apportioned on a pro rata basis of lot liability as set out in the said Plan of Subdivision.

15. FOREIGN ACQUISITIONS:

The Purchaser warrants that the Foreign Acquisitions Take Overs Act 1975 does not apply to the Purchaser or this purchase. In the event that this warranty is untrue in any respect then the Purchaser indemnifies and keeps indemnified the Vendors against any loss, damage, penalty, fine or legal costs which the Vendors may suffer as a result of the Vendors having relied on this warranty. The warranty contained in this condition will not merge on settlement but will endure for the benefit of the Vendors.

16. REPRESENTATIONS

The Purchaser acknowledges that no information representation or warranty of the Vendors or the Vendors' agent was supplied or made with the intention or knowledge that it would be relied upon by the Purchaser and that no information representation or warranty has in fact been so relied upon and that this Contract is the sole and full repository of the agreement between the Vendors and the Vendors' Agent on the one hand and the Purchaser on the other hand.

17. SETTLEMENT

- 17.1 Settlement shall take place no later than 4.00pm on the Settlement Date failing which settlement shall be deemed to take place on the next business day.
- 17.2 Settlement shall take place at the office of the Vendors' solicitors or at such other place as the Vendors may direct.
- 17.3 If on Settlement Date a separate Certificate of Title for each of the Lots on the Plan has not been issued by the Registrar of Titles, the Purchaser may not:
 - (a) make any requisition, objection, demand for compensation in relation to that; or
 - (b) delay settlement; and
 - (c) the Vendors must endorse or cause any person controlling title to endorse the transfer of land document (Transfer) with an Order to Register directing the Registrar of Titles to register the Transfer and to issue the relevant Certificate of Title to the person lodging the Transfer at the Land Titles Office.

18. OVERALL DEVELOPMENT AND STAGING

The Purchaser acknowledges that the Vendors and persons authorised by the Vendors propose to develop the whole of the land in Certificate of Title Volume 11130 Folio 692 ("the site") and any adjoining or nearby land which the Vendors may require for use in connection with the development of the site for the creation of medium to high density lots generally in accordance with the Planning Permit, plans and specifications and any additional Planning Permits that may in future affect the site ("the development").

- 18.1 The Vendors may elect in their absolute discretion to stage the development and the Plan of Subdivision as contemplated by section 37 of the Subdivision Act.

18.2 Those lots designated "S" on the Plan of Subdivision may be amended by second or subsequent plans of subdivision and a second or subsequent plan of subdivision may do any of the things specified in section 37(3)(c) of the Subdivision Act.

18.3 Subject to the Sale of Land Act 1962, the Purchaser acknowledges that it may not make any requisition, objection, delay settlement, rescind or terminate this contract or claim any compensation in relation to:

- 18.1.1 any delay in the completion of the Development.
- 18.1.2 any alteration:
 - (a) to the Development
 - (b) in the number of lots in the Plan of Subdivision; or
 - (c) to the size, shape, location or permitted use of any lot in the Development or the Plan of Subdivision (other than the land herein sold) or any future plan of subdivision relating to any other part of the Development; or
 - (d) the abandonment of any part of the Development.

19. GST

19.1 The consideration to be paid or provided under any condition of this contract for any supply made under or in connection with this contract includes GST if any is applicable.

19.2 If the price includes GST for the Supply of the Land, then the supply of the Land pursuant to this Contract is one which involves the application of the Margin Scheme, as specified in the GST Act, by the Vendors. For the purpose of Division 75 of the GST Act the Vendor and the Purchaser agree that this special condition is the required agreement in writing between the Vendors and the Purchaser to apply the Margin Scheme to the transaction evidenced by the contract.

19.3 The Vendors are not required to give the Purchaser a GST Tax Invoice (as defined by the GST Act) on the Settlement Date.

20. SELLING ACTIVITIES

20.1 The Purchaser acknowledges and understands that both before and after the Settlement Date (but only for as long as the Vendors are registered or entitled to be registered as proprietor of any of the lots within the Development), the Vendors and persons authorised by the Vendors are entitled to and may conduct marketing, leasing and selling activities in and on the adjoining allotments in such a manner as the Vendors may in their sole discretion determine and may place and maintain, on and about the adjoining allotments (excluding this lot) signs in connection with those marketing, leasing and selling activities.

20.2 The Purchaser acknowledges and agrees that it will vote against any resolution proposed for a general meeting of the Owners Corporation, the passing which would prohibit, inhibit or curtail the rights of the Vendors pursuant to this Special Condition.

20.3 The Purchaser acknowledges and agrees that this Special Condition shall bind the Purchaser and the Purchaser's successors in title and whilst the Vendors are registered or entitled to be registered as proprietors of any of the lots

within the Development, any sale, transfer or disposition of this lot will include a condition whereby the Purchaser or the transferee agrees to be bound by this Special Condition.

21. SECTION 173 AGREEMENT

- 21.1 The Purchaser acknowledges and understands that under the terms of the Planning Permit, the Vendors may be required to enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987 (Vic) with Council. This Agreement will be registered on title.
- 21.2 The Purchaser further acknowledges that the Council may require that the Section 173 Agreement be amended or a further Section 173 Agreement be entered into which the Vendors have no knowledge or notice of, which may contain further covenants and conditions. If the Council requires any amendments to the Section 173 Agreement or for a further Section 173 Agreement to be entered into, the Purchaser hereby consents and authorises the Vendors to agree to the same and enter into the Section 173 Agreement or any further agreements in whatever form the Council may require.
- 21.3 The Purchaser will not make any objection, requisition, claim any compensation or rescind or terminate this Contract due to the Section 173 Agreement or the terms and conditions of the Section 173 Agreement.
- 21.4 The Vendors will, if requested by the Purchaser, provide the Purchaser with a copy of the Section 173 Agreement, if any when it has been executed.

**Owners Corporation
Statement of Advice and Information for Prospective Purchasers
And Lot Owners**
Schedule 3, Regulation 12, Owners Corporations Regulations 2007

What is an Owners Corporation?

The lot you are considering buying is part of an Owners Corporation. Whenever a plan of subdivision creates common property, an Owners Corporation is responsible for managing the common property. A purchaser of a lot that is part of an Owners Corporation automatically becomes a member of the Owners Corporation when the transfer of that lot to the purchaser has been registered with Land Victoria.

If you buy into an Owners Corporation, you will be purchasing not only the individual property, but also ownership of, and the right to use, the common property as set out in the plan of subdivision. This common property may include driveways, stairs, paths, passages, lifts, lobbies, common garden areas and other facilities set up for use by owners and Occupiers. In order to identify the boundary between the individual lot you are purchasing (for which the owner is solely responsible) and the common property (for which all members of the Owners Corporation are responsible), you should closely inspect the plan of subdivision.

How are decisions made by an Owners Corporation?

As an owner, you will be required to make financial contributions to the Owners Corporation, in particular for the repair, maintenance and management of the common property. Decisions as to the management of this common property will be the subject of collective decision making. Decisions as to these financial contributions, which may involve significant expenditure, will be decided by a vote.

Owners Corporation rules

The Owners Corporation rules may deal with matters such as car parking, noise, pets, the appearance or use of lots, behaviour of owners, Occupiers of guests and grievance procedures.

You should look at the Owners Corporation rules to consider any restrictions imposed by the rules.

Lot entitlement and lot liability

The plan of subdivision will also show your lot entitlement and lot liability. Lot liability represents the share of Owners Corporation expenses that each Lot Owner is required to pay.

Lot entitlement is an owner's share of ownership of the common property, which determines voting rights. You should make sure that the allocation of lot liability and entitlement for the lot you are considering buying seems fair and reasonable.

Further information

If you are interested in finding out more about living in an Owners Corporation, you can contact Consumer Affairs Victoria. If you require further information about the particular Owners Corporation you are buying into you can inspect that Owners Corporation's information register.

Management of an Owners Corporation

An Owners Corporation may be self-managed by the Lot Owners or professionally managed by an Owners Corporation Manager. If an Owners Corporation chooses to appoint a professional manager, it must be a Manager registered with the Business Licensing Authority (BLA).

IF YOU ARE UNCERTAIN ABOUT ANY ASPECT OF THE OWNERS CORPORATION OR THE DOCUMENTS YOU HAVE RECEIVED FROM THE OWNERS CORPORATION, YOU SHOULD SEEK EXPERT ADVICE.

GUARANTEE

The Party to this Instrument named and described after the words "the Guarantor" in the Schedule hereto (hereinafter called "the Guarantor") IN CONSIDERATION of the Vendors named and described in the Contract of Sale annexed hereto and bearing even date herewith (hereinafter called "the Contract") entering into the Contract with the Purchaser named and described in the Contract HEREBY AGREES to guarantee and indemnify the Vendors as follows:-

1. The Guarantor shall pay to the Vendors on demand by the Vendors all moneys payable pursuant to the Contract which are not paid by the Purchaser within fourteen (14) days of the date for each payment as prescribed by the Contract whether demand has been made by the Vendors on the Purchaser or not.
2. The Guarantor shall observe and perform on demand by the Vendors all conditions obligations and liabilities binding the purchaser with which the Purchaser does not comply within fourteen (14) days after the due date for observance or performance as prescribed by the Contract whether a demand for such observance or performance has been made by the Vendors on the Purchaser or not.
3. The Vendors may without affecting this Guarantee grant time or other indulgence or compound or compromise with or release the Purchaser or any person or corporation whatsoever (including any person or corporation liable jointly with the Guarantor or severally in respect of any other guarantee or security) or release part with vary relinquish in whole or in part any security document of title asset or right to be held by the Vendors.
4. All moneys received by the Vendors from or on account of the Purchaser including any dividends upon the Liquidation or bankruptcy of the Purchaser or from any other person or corporation or from the realisation or enforcement of any security capable of being applied by the Vendors in reduction of the indebtedness of the Purchaser shall be regarded for all purposes as payment in gross without any right on the part of the Guarantor to stand in place of the Vendors or claim the benefit of any moneys so received until the Guarantor has repaid the total indebtedness of the Purchaser and so that in the event of the liquidation or bankruptcy of the Guarantor the Vendors shall be entitled to prove for the total indebtedness of the Purchaser.
5. In the event of the liquidation or bankruptcy of the Purchaser the Guarantor authorises the Vendors to prove for all moneys which the Guarantor has paid hereunder and to retain and to carry to a suspense account and appropriate at the discretion of the Vendors any dividends received until the Vendors have with the aid thereof been paid in full in respect of the indebtedness of the Purchaser to the Vendors. The Guarantor waives in favour of the Vendors all rights against the Vendors and the Purchaser and any other person or corporation estates and assets so far as necessary to give effect to anything contained in this Guarantee.
6. The remedies of the Vendors against the Guarantor shall not be effected by reason of any security held or taken by the Vendors in relation to the indebtedness of the Purchaser being void defective or informal.
7. The Guarantor will indemnify the Vendors against any loss which the Vendors may suffer by reason of the Purchaser having exceeded his powers or being incompetent to enter into the Contract and against any loss which the Vendors may suffer by reason of the Purchaser going into liquidation or becoming bankrupt.
8. If any payment made by the Purchaser to the Vendors in reduction of the amount owing under the Contract shall be subsequently avoided by virtue of any statutory provision the

- IN WITNESS WHEREOF the Guarantors have set their hands and seals the day
of 20

SIGNED SEALED AND DELIVERED by) _____
the said) _____
in the presence of:) _____

Witness: _____

SCHEDULE

VENDORS:

ADDRESS:

GUARANTOR:

ADDRESS:

GUARANTOR:

ADDRESS:

PURCHASER:

ADDRESS:

LAND:

CONSIDERATION: \$

CONTRACT: The Contract of Sale of the Land between the Vendors
and
the Purchaser for the said Consideration dated the

REIV



LAW
Institute
Victoria

GENERAL CONDITIONS

Part 2 being Form 2 prescribed by the Estate Agents (Contracts) Regulations 2008

TITLE

1. Encumbrances

- 1.1 The purchaser buys the property subject to:
 - (a) any encumbrance shown in the Vendor's Statement other than mortgages or caveats; and
 - (b) any reservations in the crown grant; and
 - (c) any lease referred to in the particulars of sale.
- 1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.

2. Vendor warranties

- 2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the Estate Agents (Contracts) Regulations 2008 for the purposes of section 53A of the Estate Agents Act 1980.
- 2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.
- 2.3 The vendor warrants that the vendor:
 - (a) has, or by the due date for settlement will have, the right to sell the land; and
 - (b) is under no legal disability; and
 - (c) is in possession of the land, either personally or through a tenant; and
 - (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and
 - (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
 - (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.
- 2.4 The vendor further warrants that the vendor has no knowledge of any of the following:
 - (a) public rights of way over the land;
 - (b) easements over the land;
 - (c) lease or other possessory agreement affecting the land;
 - (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
 - (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.
- 2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the Vendor's Statement.
- 2.6 If sections 137B and 137C of the Building Act 1993 apply to this contract, the vendor warrants that:

- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
- (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
- (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the Building Act 1993 and regulations made under the Building Act 1993.

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

3. Identity of the land

- 3.1 An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2 The purchaser may not:
 - (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.

4. Services

- 4.1 The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2 The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost

5. Consents

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

6. Transfer

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

7. Release of security interest

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

Subject to general conditions 7.3 and 7.4, the vendor must ensure that at or before settlement, the purchaser receives—

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

if the security interest is registered in the Personal Properties Securities Register.

7.3 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property that is sold in the ordinary course of the vendor's business of selling personal property of that kind unless, in the case of goods that may or must be described by a serial number in the Personal Properties Securities Register, the purchaser advises the vendor at least 21 days before the due date for settlement that the goods are to be held as inventory.

7.4 The vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any personal property that—

- (a) is not described by serial number in the Personal Property Securities Register; and
- (b) is predominantly used for personal, domestic or household purposes; and
- (c) has a market value of not more than \$5,000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the Personal Property Securities Act 2009 (Cth), not more than that prescribed amount.

7.5 A release for the purposes of general condition 7.2(a) must be in writing and in a form published by the Law Institute of Victoria, Law Council of Australia or the Australian Bankers Association.

7.6 If the purchaser receives a release under general condition 7.2(a), the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.

7.7 In addition to ensuring a release is received under general condition 7.2(a), the vendor must ensure that at or before settlement, the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.

7.8 The purchaser must advise the vendor of any security interest that the purchaser reasonably requires to be released at least 21 days before the due date for settlement.

7.9 If the purchaser does not provide an advice under general condition 7.8, the vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released.

7.10 If settlement is delayed under general condition 7.9, the purchaser must pay the vendor—

- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay—
- as though the purchaser was in default.

7.11 Words and phrases used in general condition 7 which are defined in the Personal Property Securities Act 2009 (Cth) have the same meaning in general condition 7.

8. Builder warranty insurance

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

9. General law land

9.1 This general condition only applies if any part of the land is not under the operation of the Transfer of Land Act 1958.

9.2 The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.

9.3 The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.

9.4 The purchaser is taken to have accepted the vendor's title if:

- (a) 21 days have elapsed since the day of sale; and
- (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.

9.5 The contract will be at an end if:

- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
- (b) the objection or requirement is not withdrawn in that time.

9.6 If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.

9.7 General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the Transfer of Land Act 1958, as if the reference to 'registered proprietor' is a reference to 'owner'.

VENDOR

9. Settlement

9.1 At settlement:

- (a) the purchaser must pay the balance; and
- (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.

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

9.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

10. Payment

10.1 The purchaser must pay the deposit:

- (a) to the vendor's licensed estate agent; or
- (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or
- ~~(c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.~~

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

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

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

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

10.4 At settlement, payments may be made or tendered:

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

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

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

11. Stakeholding

11.1 The deposit must be released to the vendor if:

- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either:
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts do not exceed 80% of the sale price; and
- (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and

- (c) all conditions of section 27 of the Sale of Land Act 1932 have been satisfied.

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

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

12. GST

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

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

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

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

12.4 If the particulars of sale specify that the supply made under this contract is a 'farming business':

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

12.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':

- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

12.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.

12.7 This general condition will not merge on either settlement or registration.

12.8 In this general condition:

- (a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (b) 'GST' includes penalties and interest.

14. Loan

- 14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.
- 14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:
- (a) immediately applied for the loan; and
 - (b) did everything reasonably required to obtain approval of the loan; and
 - (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
 - (d) is not in default under any other condition of this contract when the notice is given.
- 14.3 All money must be immediately refunded to the purchaser if the contract is ended.

15. Adjustments

- 15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.
- 15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:
- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
 - (b) the land is treated as the only land of which the vendor is owner (as defined in the Land Tax Act 2005); and
 - (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
 - (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

TRANSACTIONAL

16. Time

- 16.1 Time is of the essence of this contract.
- 16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

17. Service

- 17.1 Any document sent by post is taken to have been served on the next business day after posting, unless proved otherwise.
- 17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:
- (a) personally; or
 - (b) by pre-paid post; or
 - (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner.
- 17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

18. Nominee

The purchaser may nominate a substitute or additional purchaser, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

19. Liability of signatory

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of default by a proprietary limited company purchaser.

20. Guarantee

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

21. Notices

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

22. Inspection

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

23. Terms contract

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

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the Sale of Land Act 1962; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

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

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;

- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;
- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

24. Loss or damage before settlement

- 24.1 The vendor carries the risk of loss or damage to the property until settlement.
- 24.2 The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3 The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4 The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.
- 24.5 The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6 The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

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

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

DEFAULT

26. Interest

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

27. Default notice

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

27.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given -
 - (i) the default is remedied; and
 - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

28. Default not remedied

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

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

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

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

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

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

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

EXECUTED by NEEDCOM HOMES PTY)
 LTD ACN in accordance with section 127(1))
 of the *Corporations Act 2001* by being signed)
 by authorised persons:)

 Director

 *Director/company secretary
 *Delete whichever is inapplicable

 Full Name

 Full Name

 Usual Address

 Usual Address:

EXECUTED by CLAUDE JOSEPH)
CECCOMANCINI in the presence of:)
)
)



 Witness

LINA PRICOLI

CLAUDE JOSEPH CECCOMANCINI

305 HARVEST HOME ROAD EPPING

EXECUTED by SANDRA KAYE)
CECCOMANCINI in the presence of:)
)
)



 Witness

LINA PRICOLI

SANDRA KAYE CECCOMANCINI

305 HARVEST HOME ROAD EPPING

Usual Address

ANNEXURE B

Victorian New Homes Contract

OWNERS:

JOB:

SITE:



To verify your builder is a HIA member call 1902 973 555

© HIA Contracts Online (based on paper copy version dated January 2011)

All rights reserved. No part of this document may be reproduced, stored, copied, distributed or transmitted in any form or by any means without the prior written consent of HIA.

NOTICE APPROVED BY THE DIRECTOR OF
FAIR TRADING AND BUSINESS AFFAIRS
PURSUANT TO SECTION 31(n)
OF THE DOMESTIC BUILDING CONTRACTS ACT 1995

COOLING OFF PERIOD

NOTICE TO BUILDING OWNER: YOU MAY END THIS CONTRACT WITHIN FIVE CLEAR BUSINESS DAYS AFTER RECEIPT BY YOU OF A SIGNED COPY OF THE CONTRACT BY FILLING IN THE NOTICE BELOW AND GIVING IT TO THE BUILDER IN ONE OF THE FOLLOWING WAYS:

- (1) PERSONALLY;
- (2) LEAVING IT AT HIS OR HER ADDRESS SET OUT IN THE CONTRACT WITH A PERSON WHO APPEARS TO BE AT LEAST 16 YEARS OLD;
- (3) SENDING IT BY PRE-PAID REGISTERED POST TO THE ADDRESS SET OUT IN THIS CONTRACT;
- (4) SENDING IT BY FACSIMILE TO THE FACSIMILE NUMBER (IF ANY) SET OUT IN THIS CONTRACT.



DETACH ALONG DOTTED LINE

NOTICE THAT CONTRACT IS ENDED

A Building Owner cannot withdraw from a contract under the Act if:

1. The Builder and the Building Owner have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of the work in relation to the same home or land; OR
2. The Building Owner received independent legal advice from a practicing solicitor concerning the contract before entering into the contract.

To (Builder)

I/We

..... give notice
under our contract with you that the Contract is ended. Please refund the deposit less \$100
and any out of pocket expenses incurred by you which I/we have previously approved.

Building Owner's signature

Date:

Particulars of contract	1
Date	1
Owners	1
Builder	1
The Building works	1
Lending details	1
Warranty/professional indemnity insurer	2
The land	2
Schedule 1	3
Time for completion	3
Deposit	4
Planning approval	4
Building permit	4
Percentage if contract is ended	4
Number of days to make Progress Payments after stage completed and notice received	4
Agreed interest for late Progress payments	4
Agreed damages for late completion of the Building Works	5
Percentage applicable to extra work	5
Lending body finance	5
Agreed damages for delays	5
Schedule 2	6
Prime cost items and provisional sum items and allowances	6
Schedule 3	7
Schedule 3 Method 1	8
Schedule 3 Method 2	9
Attachment 1	10
Schedule 4	11
Schedule 5	13
Signatures	14
Deed of guarantee and indemnity	15
A. Interpretation	17
Definitions	17
Headings, footnotes, etc.	18
Contract complete in itself	18
Joint and several obligations	18
Assignment and sub-letting	18
B. Main obligations of the parties	19
Notices	19
Building Act insurance	19
Finance	19
Deposit	19

Particulars of contract

Date

This contract is dated the:

Owners

If the Owner is a company, a Director's Guarantee must be signed before this Contract is signed. See Deed of Guarantee and Indemnity

NAME
ADDRESS
SUBURB
ABN
WORK
FAX
HOME
MOBILE
EMAIL
STATE
ACN
POSTCODE

Builder

NAME METRICON HOMES PTY LTD
ADDRESS 501 BLACKBURN ROAD
SUBURB MOUNT WAVERLEY
ABN 552 012 761 24 ACN 005 108 752
WORK 03 9915 5555 HOME
FAX 03 9222 5144 MOBILE
EMAIL
LICENCE NUMBER DB-U 8929
REGISTERED BUILDING PRACTITIONER MARIO BIASIN
HIA MEMBER NUMBER 505430 HIA MEMBERSHIP EXPIRY

The Building works (Brief description) as set out in the Specifications and Plans

These documents must be signed and dated with the Contract.

CONSTRUCTION OF A DWELLING HOUSE

The Specifications include pages that were prepared and supplied by METRICON HOMES PTY LTD
There are sheets of Plans that were prepared by and supplied by METRICON HOMES PTY LTD
There are sheets in the Engineer's Design/s and it/they was/were, prepared by STRUCTURAL WORKS for the Builder

Lending details

Lender's
LENDER
ADDRESS
SUBURB
STATE
POSTCODE

Schedule 1

1. Time for completion (Clause 11)

Building works to be carried out by the Owner or the Owner's agent are as listed in Schedule 5.

Days including the following estimates for delays:

- Inclement weather and the effects of inclement weather 25 days
- Weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work 71 days
- Other days that are reasonable having regard to the nature of the Building Work 0 days

The Builder has excluded from the Contract Price amounts payable to third parties in relation to the Building Works. The work or things listed below are not included in the Contract Price and the Builder's reasonable estimate of the amount payable in respect to them are listed as follows:

Item	Estimate
1. Conveying connection or installation of:	
(a) Gas	
(b) Electricity	
(c) Telephone to one point	
(d) Water	
(e) Sewage	
2. Issue of Planning permit	
3. Issue of building permit	
4. Other	
(a) Additional cost for telephone trench	
(b) All costs associated with water usage and service charges relating to water, drainage and sewerage during the construction period shall be borne by the Owner.	

2. Contract Price (Clause 12)

PRICE EXCLUDING GST: \$.00
 GST ON THE ABOVE AMOUNT: \$.00
 THE CONTRACT PRICE IS: \$.00
 The contract price is GST inclusive.

The price of this Contract is not fixed, and may be altered as a result of:

- additional costs caused by any deficiency or conflict within the Contract Documents (Refer to Clause 16);
- additional building permit fees (Refer to Clause 18);
- variations including those required by the council/registered building surveyor (Refer to Clause 21);
- the cost of providing access where applicable (Refer to Clause 26);
- interest on overdue payments (Refer to Clause 31);

9. Agreed damages for late completion of the Building Works

(Clause 40)

(if nothing stated then \$250 per week)

\$250.00 per week

10. Percentage applicable to extra work (Clauses 12.2, 17.2, 21.2)

(if no percentage stated then 20% to cover Builder's overheads, supervision and profit)

20.00%

11. Lending body finance (Clause 8.0)

Finance with approval to be within 14 days from the date of this Contract (14 days unless otherwise agreed)

12. Agreed damages for delays (Clause 34.3)

(if nothing stated then \$250 per week)

\$250.00 per week

DRAFT
DO NOT SIGN

Schedule 3

CONSTRUCTION STAGES APPLICABLE TO METHOD 1 PROGRESS PAYMENTS

'Base Stage' means	<p>(a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level;</p> <p>(b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;</p> <p>(c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured;</p> <p>(d) in the case of a home with a concrete floor, the stage when the floor is completed;</p> <p>(e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured;</p>
'Frame stage' means	the stage when a home's frame is completed and approved by a building surveyor;
'Lock-up stage' means	the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);
'Fixing stage' means	the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position;
'Completion' means	the Building Works are complete in accordance with the Contract Documents.

NOTE: This table is prescribed by Section 40 of the Domestic Building Contracts Act 1995. In the case of a Domestic Building Contract that is not listed in the Table, a Builder must not demand or receive any amount or instalment that is not directly related to the progress of the Building Works being carried out under the Contract.

TABLE

Type of contract	Percentage of Contract Price	Stage
Contract to build to lock-up	20%	Base Stage
	25%	Frame Stage
Contract to build to fixing stage	12%	Base Stage
	18%	Frame Stage
	40%	Lock-up stage
Contract to build all stages	10%	Base Stage
	15%	Frame Stage
	35%	Lock-up Stage
	25%	Fixing Stage

Schedule 3 Method 2

PROGRESS PAYMENTS

NOTES

Under Method 2 the Builder and the Owner must agree on stages at which Progress Payments must be made. Remember, the Owner must read and sign Form 1 of the Regulations (refer to Attachment 1) before using Method 2.

FORM 2 OF THE REGULATIONS – REGULATION 6(B)

The parties agree –

- (i) that the Progress Payments fixed by Section 40 of the Domestic Building Contracts Act 1995 do not apply; and
- (ii) that instead the percentage of the Contract Price and amounts payable are as follows:

Stage	Percent	Amount
Deposit	5.00%	\$0.00
Base Stage* In the case of a house with concrete floor, the stage when the floor is complete. In the case of a house with timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to the floor level.	20.00%	\$0.00
Frame Stage The stage when the house frame is complete and external windows are installed (even if the windows are only temporary). (Does not include completion of garage, carport, patio, pergolas or any external structure frames included in the contract). Or percentage of works completed.	20.00%	\$0.00
Lockup Stage The stage when a house external wall cladding is installed, eaves lining and roof covering are fixed (roof pointing not necessarily complete). Front and rear doors installed (even if only temporary). Or percentage of works completed.	25.00%	\$0.00
Fixing Stage The stage when plaster is hung (decorative cornice may not be complete) architraves, skirting, doors, baths, basins, troughs, sinks, cabinets and cupboards are fitted and fixed in position. Attached garages, front porticos and carports are completed. (Granite installation may not be complete). Or percentage of works completed.	20.00%	\$0.00
Completion Electrical and plumbing fit offs, tiling of walls and floors, painting, installation of shower screens, mirrors and shelving to cupboards. Garage doors are installed. House and site clean are completed. All other items under the contract listed in the specification are complete.	10.00%	\$0.00
Total	100.00%	\$0.00

Schedule 4

SPECIAL CONDITIONS

The Owner acknowledges that as the plans have now been completed and all inclusions have been confirmed, no additional requests will be accepted by the Builder.

Each of the Owners authorize the other to sign and authorize all documents, variations and alike for the purposes of this Contract.

Special Conditions 1

The parties acknowledge that the Builder must comply with all requirements of Occupational Health and Safety Act on the Land.

Special Condition 1.1

Despite anything to the contrary contained in the Contract, the Building Owner and any other on the Building Owner's behalf or any representative or agent of the Building Owner must not enter the Land whilst the Builder has exclusive licence to occupy it for the purpose of construction without the prior consent of the Builder and then only by appointment with the Builder. Should the Building Owner, others on the Building Owners behalf or any representative or agent of the Building Owner enter the Land and/or undertake Building Works on the Land then the Building Owner must satisfy the Builder and ensure:

1. that all such persons comply with Occupational Health and Safety Regulations and insurance and the Builders contractors' all risk insurance requirements and public liability insurance cover before starting works and any such person must provide to the Builder an industry approved safe work procedure and work method statement for the works to be carried out by such person and such safe work procedure and work method statement must be approved by a senior member of the Occupational Health and Safety Department prior to commencement of the Building Works on the Land;
2. any such person must have full indemnity insurance, private or Workcover insurance and hold a mandatory Occupational Health and Safety Industry Induction yellow/red card;
3. the person undertaking works must undergo the Builders general safety induction by an appointment with the Builders area supervisor or representative prior to commencement of Building Works;
4. must sign all documents required by the Builder.

If the Building Owner does not comply with the provisions of this special condition then the Building Owner or others on the Building Owners behalf or any representative or agent of the Building Owner shall not be permitted access to the Land any works to be performed by any one of them will be strictly prohibited and the Builder has the right to suspend the Building Works and apply for an extension of the contract time until such compliance is achieved.

.....
Signature of Building Owner/s

Schedule 5

EXCLUDED ITEMS

The Owner acknowledges that the Contract Building Works do not include those items of building work and materials listed below and accepts full responsibility for this work and building materials

Unless specifically included in the New Home Contract which forms part of this Contract, the following items are excluded from this Contract:

- a) Landscaping including plants, lawns, sprinkler systems, garden furniture, fencing, pergolas, paving, driveway, steps, porches, retaining walls and AG drains;
- b) Floor coverings including timber floor, carpet and ceramic (or other material) floor tiles, security system, deadbolts, spa bath, dishwasher, floor wastes, air-conditioning/evaporative cooling system, ducted vacuum, microwave, TV points, concealed music system, refrigerator and televisions;
- c) Decorating items including all furniture, window dressings, light fittings including low voltage and external light points;
- d) Items included in the Display Option List but not included in the attached New Home Contract which forms part of this Contract.
- e) All costs associated with Water usage and Service charges relating to Water, Drainage and Sewerage during the Construction period. These costs shall be borne by the owner.

Owner

NAME

SIGNATURE

Deed of guarantee and indemnity

Interpretation

BUILDER IS

OWNER IS

Guarantors

ADDRESS LINE 1

ADDRESS LINE 2

SUBURB

STATE

POSTCODE

Contract is that between the Builder and the owner dated

Background

The owner executed the contract at the guarantor's request.

The guarantor is aware of the owner's obligations under the contract.

Operative

1. Guarantee

The Guarantor guarantees to the Builder, the fulfilment of the Owner's obligations under the Contract including but not limited to the due payment of all moneys arising out of the subject matter of the Contract.

2. Indemnity

The Guarantor indemnifies the Builder against any claim, loss or damage arising out of the subject matter of the contract caused by or resulting from any non-fulfilment of the Owner's obligations under the Contract.

3. Principal Debtor

The Guarantor is deemed to be principal debtor jointly and severally liable with the Owner to discharge the Owner's obligations under the Contract.

4. No Merger

The Guarantor agrees that this Deed does not merge on completion or on the ending of the Contract by either party and continues notwithstanding that the Owner, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. No Release

The Guarantor is not discharged by:

- any variation to the Contract including a variation to the building works;
- any delay or claim by the Builder to enforce a right against the Owner; and
- any forbearance given to the Owner to perform the Owner's obligations under the contract.

6. Severability

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

A. Interpretation

Definitions

NOTE

Throughout the Contract whenever a defined phrase or word is used it is shown in bold print.

1.0

- '**Builder**' means the person, partnership or company named in the Particulars of Contract.
- '**Building Period**' means the building construction time estimated by the **Builder** to carry out the **Building Works** as stated in Item 1 of Schedule 1, subject to Clause 34.
- '**Building Works**' means the works to be carried out and completed by the **Builder** as shown in the **Contract Documents** and as varied in accordance with this Contract.
- '**Building Site**' means the land upon which the **Building Works** are to be carried out.
- '**Business Day**' means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.
- '**Commencement**' means the day on which the **Building Works** commence on the **Building Site**.
- '**Completion**' means that the **Building Works** to be carried out under the Contract have been completed in accordance with the **Plans** and **Specifications** set out in the Contract.
- '**Contract Documents**' means this signed Contract and the Conditions, signed **Specifications**, signed **Plans** and an **Engineer's Design**.
- '**Contract Price**' means the amount shown in Item 2 of Schedule 1.
- '**Days**' means calendar days.
- '**Engineer's Design**' includes a footing design or other structural design that has been prepared by a qualified engineer for the concrete footings, stumps, piers or slab construction, or for a particular part of the **Building Works** that require a structural design, drainage design where appropriate and computations accompanying the foregoing.
- '**Final Claim**' means the **Builder's** claim setting out the balance of the **Contract Price** due for payment by the **Owner** to the **Builder**, taking into account all monies paid by the **Owner** and all other amounts to be added to or deducted from the **Contract Price** under this Contract.
- '**Final Payment**' means the payment of the amount of the **Final Claim**.
- '**Foundations Data**' has the same meaning as set out in Section 30 of the Domestic Building Contracts Act 1995.
- '**Land**' means the land containing the **Building Site**.
- '**Lending Body**' means a person or corporation which has agreed or agrees to make a loan to the **Owner** to enable the **Owner** to pay monies which become payable to the **Builder** under this Contract.
- '**Notice of Completion**' means a notice given by the **Builder** pursuant to Clause 36 informing the **Owner** that the **Building Works** have reached **Completion**.

Notices

- 6.0 A notice is given to the person when:
- it is delivered in person;
 - 2 clear Business Days have passed after it has been sent by prepaid post to the person; or
 - sent by facsimile (where this service is available).
- 6.1 The parties must notify each other promptly of a change of address.
- 6.2 The notice shall be deemed to have been served if sent to the address, or facsimile, which the party sending the notice reasonably believes to be the current address, or facsimile, of the other party.

B. Main obligations of the parties

Building Act insurance

NOTE

The insurance policy is all of the terms and conditions of the insurance policy and not just the certificate of insurance.

- 7.0 Where an insurance policy is required under Division 3 of Part 9 of the Building Act in relation to this Contract and it is not issued before this Contract is entered into then until such an insurance policy is issued:
- the Builder is not able to enforce any provision of this Contract;
 - the Building Works must not commence; and
 - no money (including the deposit) is payable under this Contract.
- 7.1 The Builder is to ensure that a copy of that insurance policy is given to the Owner within 7 Days after it is issued.

Finance

- 8.0 If an amount is inserted in Item 11 of Schedule 1 then this Contract is conditional upon the Lending Body providing to the Owner written approval of a loan of at least that amount in order to enable the Owner to pay to the Builder the monies which become payable under this Contract, such approval unless otherwise stated in Item 11 of Schedule 1 to be provided within 14 Days of the date of this Contract. The Owner promises diligently to pursue such written approval.
- 8.1 Should such written approval not be obtained within the time provided, this Contract will be voidable within 7 Days at the option of the Owner to be exercised by notice in writing to the Builder, whereupon all monies paid by the Owner to the Builder, will be refunded except for a sum calculated in accordance with Clause 19.4.

Deposit

- 9.0 The Owner must pay to the Builder the deposit set out in Item 3 of Schedule 1 on the later of:
- the signing of this Contract; or
 - the issue of an insurance policy in relation to this Contract under Division 3 of Part 9 of the Building Act.

Contract. The Owner may be required to pay more if:

- there are additional costs payable by operation of Clause 12.1;
- additional costs are caused by a deficiency or conflict within the Contract Documents (refer to Clause 16);
- a survey of the Land is needed to determine the correct boundaries of the Land (refer to Clause 17);
- additional building permit fees are payable by operation of Clause 18;
- there is a variation to the costs of complying with changed laws (refer to Clauses 21 and 22);
- there is an additional amount to pay for an agreed variation (refer to Clauses 23 and 24);
- the Owner is to pay the cost of providing access (refer to Clause 26);
- interest charges apply by operation of Clause 31; or
- there are additional costs associated with Prime Cost Items or Provisional Sum Items in Schedule 2 (refer to Clause 33).

12.1 Should the following circumstances arise:

- that the authorised person under the Building Act properly requires that a variation to the Building Works be made;
- the variation requirement arose as a result of circumstances beyond the Builder's control;
- the Builder gave a notice pursuant to Clause 23 including a copy of such requirement; and
- the Owner does not within 5 Business Days of receipt of such notice advise in writing that such variation requirement is disputed,

the Building Works are varied by operation of this Sub-Clause in accordance with that requirement and the price for the variation will be charged and paid in accordance with Clause 24.

12.1.1 Subject to Clause 12.1.2, where the requirement relates to costs associated with excavations and/or footings, the Builder must make no charge unless the Builder has obtained the Foundations Data before entering this Contract and the cost could not reasonably have been ascertained from the Foundations Data. For the purposes of this Clause, the Builder does not have to commission the preparation of Foundations Data to the extent that such data exists and it is reasonable for the Builder to rely on that data.

12.1.2 Notwithstanding Clause 12.1.1, the Builder is entitled to make an extra charge for an amount not already provided for in this Contract if the need for the additional amount could not have been reasonably foreseen had the Builder obtained the Foundations Data.

12.2 The price for additional excavations and footings, if any, including an amount for the Builder's profit and overheads, being the percentage stated in Item 10 of Schedule 1 applied to the cost of that work, is payable with the next Progress Payment.

12.3 If there are additional charges associated with Sub-Clause 12.1 which when added to the Contract Price increases the Contract Price by 15% or more the Owner may bring this Contract to an end by giving the Builder a written notice, either personally or by registered post.

12.4 If the Contract is brought to an end by the Owner under Sub-Clause 12.3, the Builder is entitled to a reasonable price for the work carried out under the Contract to the date the Contract is ended.

Interpretation of Contract Documents

- 16.0 If there is any difference between scaled dimensions and figures on the Plans, the figures prevail. If there is any inconsistency between these Contract conditions and related Contract Documents they take priority in the following order:
- these Contract conditions;
 - the Specifications; then
 - the Plans.
- 16.1 If the Builder finds any deficiency in the Plans or any conflict between the Plans and the Specifications, the Builder must promptly notify the Owner in writing. The Owner must then advise the Builder in writing how to resolve the problem or which document to follow. If the Owner does not do so within 7 Days, the Builder may decide what to do, and must notify the Owner in writing within 7 Days of the decision or the document that will be followed.
- 16.2 If additional costs will be incurred by reason of the operation of Clause 16.1 the Builder must request a variation pursuant to the provisions of Clause 23.2 and the procedure in relation to such variation as set out in Clauses 23 and 24 will apply.
- 16.2.1 Should the Owner's consent required by the Builder pursuant to Clause 23.4 not be provided by the Owner within 7 Days of the Builder's notice given pursuant to Clause 23.2, then either party may end this Contract within 14 Days of the expiration of such 7 Day period by written notice given to the other.
- 16.2.2 If this Contract is ended under this Clause then the Builder shall be entitled to a reasonable amount calculated in the manner set out in Clause 19.4.
- 16.3 The Builder is not entitled to claim for extra costs for errors in Plans and/or Specifications that the Builder has prepared.

Owner must identify the Land

- 17.0 The Owner must show the Builder the boundaries of the Land and warrants that they are correct and put up a sign on the Land showing the Owner's name and the lot or street number.
- 17.1 If the Builder has a reasonable doubt about whether the boundaries are correct, the Builder must notify the Owner in writing and the Owner must obtain a survey within 7 Days.
- 17.2 If the Owner does not do so within 7 Days, the Builder may, as the Owner's agent, obtain the survey. The Owner must pay to the Builder the price of the survey, including an amount for the Builder's profit and overheads being the percentage as shown in Item 10 of Schedule 1 applied to the cost of the survey, with the next Progress Payment.

Building permit fees

- 18.0 Unless shown otherwise in Items 4 and 5 of Schedule 1 the Builder has included in the Contract Price fees payable for the building permit and planning approvals.

Insurance

NOTE

Re Clause 20.4

The Owner should note that the Owner will be liable for loss caused by the Owner or someone for whom the Owner is responsible, i.e. any Sub-Contractors, employees, etc working on the site for the Owner to perform any Building Works which are not included in the Building Works. The Owner should therefore consider insuring against this Public Liability risk.

20.0 The Builder:

- must insure in the names of the Builder, the Owner and the Lending Body (as stated in the Particulars of Contract), against liability for physical loss, destruction or damage to the Building Works and the goods and materials on the Land as described in the Contract Documents; and
- must indemnify the Owner in respect of and insure against liability for personal injury, death, property loss or damage arising out of the Building Works.

- 20.1 The Builder must maintain the insurance from the date the Owner gives the Builder Possession of the Land under Clause 25 to the earlier of:
- the date that the Owner takes Possession of the Land or any part of the Land; or
 - the date the Builder hands over Possession of the Land.

The Owner must pay the Builder a reasonable amount to cover the pro-rata cost of the insurance for any period during which the Final Payment is unreasonably withheld from the date the money is due.

- 20.2 The Builder must provide the Owner with a current 'Certificate of Currency' within 7 Days of Commencement of the Building Works. The Certificate must show the names of the Builder, Owner, Lending Body and the job address.
- 20.3 The cover for personal injury, death, property loss or damage arising out of the Building Works must be for an amount which is not less than \$5 million for any one claim and the Builder must include as parties to be insured under the policy, any Sub-Contractors who do not provide the Builder with evidence of adequate and continuing insurance cover.
- 20.4 The Builder is not responsible for, and does not indemnify the Owner or the Owner's employees or agents or any person claiming through the Owner against any loss or liability that arises out of something done or not done by the Owner or any person for whom the Owner is responsible. The Owner indemnifies the Builder in relation to such claims.
- 20.5 The Builder must be registered with WorkCover to protect any person employed by the Builder in carrying out the Building Works.

D. During work

Variations to statutory laws

NOTE

Refer to Clause 24 for information relating to Variations requested by the Owner or the Builder.

- 21.0 If the Plans and/or the Specifications have to be varied to comply with either a change in the law or statutory requirements after this Contract is entered into the Builder must not give effect to any variation unless the following circumstances apply:

- 23.1 If the Owner requests the variation and the Builder reasonably believes the variation will not require a variation to any permit and will not cause any delay and will not add more than 2% to the Contract Price the Builder may carry out the variation.
- 23.2 If the Builder requests the variation, the notice given by the Builder must state the following further particulars:
- what effect the variation will have on the Building Works;
 - if the variation will result in any delays, the Builder's estimate of such delays; and
 - the cost of the variation and the effect it will have on the amount payable by the Owner under this Contract.
- 23.3 If the Owner requests a variation and if the Builder has not agreed to carry out the variation under Clause 23.1, the Builder must give the Owner, within a reasonable time of receiving the notice under Clause 23.0, a notice:
- setting out the particulars listed in Clause 23.2; or
 - stating that the Builder refuses or is unable to carry out the variation and stating the reasons therefore.
- 23.4 Subject to Sub-Clause 23.1, the Builder must not give effect to any variation unless the Owner gives the Builder a signed consent to or request for the variation attached to a copy of the notice referred to in Clauses 23.2 or 23.3.
- 23.5 If, within 7 Days of the Builder giving the Owner the notice of particulars under Clause 23.3, the Owner does not give the Builder:
- a signed request to the variation under Clause 23.4; and
 - written evidence of the Owner's ability to pay for the variation,
- the request by the Owner for the variation is deemed withdrawn.

Effect of variations

- 24.0 When a variation has been effected under Clauses 12, 23 or 38:
- if the variation increases the amount to be paid by the Owner under this Contract the amount is added to the next Progress Payment after the work is done. If it decreases the amount to be paid by the Owner under this Contract the amount is subtracted from the next Progress Payment;
 - the Contract Documents are read as if so varied; and
 - the Completion Date or the number of Days required to finish the work are read as that date or number of Days, as adjusted to take account of the variation.

Possession

- 25.0 The Owner must, within 7 Days of receiving a request from the Builder, give the Builder exclusive Possession of the Land to carry out the Building Works. The Builder's right to Possession of the Land is under a contractual licence only. The Builder has the Owner's authority to allow or refuse anyone access, and may remove unauthorised people from the Land.

- 30.1 If the Owner is getting finance from a Lending Body, the Owner must give the Lending Body an authority, while this Contract lasts, to make payment direct to the Builder of any amount the Owner agrees has become due under this Contract. The Owner must notify the Lending Body when each stage is completed and the payment is due.

Builder's right to agreed damages

NOTE

Section 27 of the Act provides that if the Owner fails to pay the Builder any amount due under the Contract a Domestic Building Dispute exists between the parties.

- 31.0 If the Owner does not pay the amount of a Progress Payment, or the Final Payment, within 7 Days after it becomes due, the Builder is entitled to interest on the unpaid amount, at the rate set out in Item 8 of Schedule 1, from the date the payment becomes due until the date the payment is made.

Unfixed materials on Site

- 32.0 Any unfixed goods or materials on the Building Site are the property of the Builder.

Prime Cost Items and Provisional Sum Items

NOTE

Prime Cost Items - Certain fixtures and fittings may need to be selected after the signing of the Contract. These items may include the stove or special kitchen and bathroom products. The Builder will allow in the Contract Price an amount which should cover the expected cost, subject to the Owner's final selection.

Provisional Sum Items - Are items of work (labour and materials) included in the Contract Price for which the Builder cannot give a definite price, for example, site excavation, rock removal and concrete footings.

- 33.0 Where the Owner is to select any item for a Prime Cost Item or a Provisional Sum Item, the Owner must make the selection within 7 Days of receiving a written request to make the selection from the Builder.

- 33.1 An allowance for a Prime Cost Item does not include amounts for installation, Builder's profit and overheads and cartage. These are included in the Contract Price.
- 33.2 An allowance for a Provisional Sum Item does not include an amount for the Builder's profit and overheads. The amount for the Builder's profit and overheads is included in the Contract Price.
- 33.3 If a Prime Cost Item selected by the Owner is unavailable, then the Owner must specify an alternative item within 7 Days of the Builder's request to do so, and if the Owner fails to comply the Builder shall be entitled to select an alternative as near as practical in quality to the original item selected by the Owner.

NOTE

The amount to be stated in Item 12 of Schedule 1 is negotiable and is to reflect the damage the Builder will suffer as a result of a delay.

The minimum amount that the Builder is entitled to is \$250 per week.

34.3 If there is an extension of time due to anything done or not done by the Owner or by an agent, contractor or employee of the Owner, the Builder is, in addition to any other rights or remedies, entitled to delay damages worked out by reference to the period of time that the Building Period is extended and the greater of \$250 per week or that amount set out in Item 12 of Schedule 1. Delay damages will accrue on a daily basis.

34.4 The Owner must pay any delay damages with the next Progress Payment.

Suspension of work

- 35.0 The Builder may suspend the Building Works if the Owner:
- does not make a Progress Payment that is due within 7 Days after it becomes due; or
 - is in breach of this Contract.
- 35.1 If the Builder suspends the Building Works, the Builder must immediately give notice in writing by registered post to the Owner. The Owner must remedy the breach within 7 Days after receiving the notice. The Builder must recommence the Building Works within 21 Days after the Owner remedies the breach and gives notice of this to the Builder.
- 35.2 The date on which the Building Works are to be completed is changed and extended to cover the period of suspension.

E. Completion of the Works

Final inspection

- 36.0 When the Builder considers that the Building Works have reached Completion the Builder is to give to the Owner:
- a Notice of Completion; and
 - the Final Claim.
- 36.1 Notwithstanding any other provision of this Contract, the Builder must not demand Final Payment until after the Builder has given to the Owner either:
- a copy of the occupancy permit under the Building Act 1993, if the building permit for the Building Works requires the issue of an occupancy permit; or
 - in any other case, a copy of the certificate of final inspection.
- 36.2 The Builder and the Owner must meet on the Building Site within 7 Days of the Owner receiving the Notice of Completion and Final Claim to carry out an inspection in accordance with Clause 37.
- 36.3 If the Owner does not meet with the Builder to inspect the Building Works as required by Clause 36.2, the Owner must pay the amount of the Final Claim within a further period of 7 Days.

Defects within the 3 month period

- 39.0 The Builder must fix any additional defects in the Building Works that the Owner notifies in writing within 3 months from the earlier of:
- the date that the Owner takes Possession of the Land or any part of the Land; or
 - the date the Builder hands over Possession of the Land.
- 39.1 Defects that in the reasonable opinion of the Builder affect the safety or security of the Building Works or may lead to it being damaged must be fixed by the Builder as soon as practicable after notification by the Owner.
- 39.2 Other defects must be listed by the Owner and given to the Builder at the end of the 3 month period. The Builder must fix those defects within 21 Days after the expiration of the 3 month period or as soon as reasonably practicable.
- 39.3 The Builder must fix defects without cost to the Owner. The Builder must do so in normal working hours or at any time agreed between the Builder and the Owner. The Owner must provide reasonable access to the Builder.

Owner's claim for agreed damages

NOTES

Re Clause 40

The amount used to calculate agreed damages takes into account the expenses that will be incurred by the Owner if the Building Works are not completed on time (for example, rent for alternative housing or interest payments).

The amount to be stated in Item 9 of Schedule 1 is negotiable and should accurately reflect the Owner's estimated expenses. If no amount is stated in Item 9 of Schedule 1, the amount of \$250 per week is allowed to the Owner.

The Building Period shown in Item 1 of Schedule 1 may be extended due to unforeseen delays. Refer to Clause 34.

- 40.0 If the Building Works have not reached Completion by the end of the Building Period the Owner is entitled to agreed damages in the sum set out in Item 9 of Schedule 1 for each week after the end of the Building Period to and including the earlier of:
- the date the Building Works reach Completion;
 - the date this Contract is ended; and
 - the date the Owner takes Possession of the Land or any part of the Land.

- 40.1 The Owner may deduct the amount of any such damages from the Final Payment.

Ending this Contract under bankruptcy or liquidation

- 41.0 Either the Owner or the Builder may bring this Contract to an end by giving written notice to the other by registered post, if the other becomes bankrupt or assigns his or her estate for the benefit of his or her creditors, or makes a composition or arrangement with them, or, being a corporation

- 43.2 If the Builder is in substantial breach of this Contract the Owner may give the Builder a written notice to remedy the breach:
- specifying the substantial breach;
 - requiring the substantial breach to be remedied within 10 Days after the notice is received by the Builder; and
 - stating that if the substantial breach is not remedied as required, the Owner intends to end this Contract.
- 43.3 If the Builder does not remedy the substantial breach stated in the notice to remedy the breach within 10 Days of receiving that notice, the Owner may end this Contract by giving a further written notice to that effect.
- 43.4 The Owner is not entitled to end this Contract under this Clause when the Owner is in substantial breach of this Contract.

Owner may get another Builder to finish work

- 44.0 If the Owner brings this Contract to an end under Clause 43, then the Owner's obligations to make further payment to the Builder is suspended for a reasonable time to enable the Owner to find out the reasonable cost of completing the Building Works and fixing any defects.
- 44.1 The Owner is entitled to deduct that reasonable cost calculated under Clause 44.0 from the total of the unpaid balance of the Contract Price and other amounts payable by the Owner under this Contract if this Contract had not been terminated and if the deduction produces:
- a negative balance - the Builder must pay the difference within 7 Days of demand; and
 - a positive balance - the Owner must immediately pay the difference to the Builder.

Subcontracting

- 45.0 The Builder may subcontract any part of the Building Works but such subcontracting does not relieve the Builder from the Builder's obligations under this Contract.

No waiver

- 46.0 Except as provided at law or in equity or elsewhere in this Contract, none of the provisions of this Contract may be varied, waived, discharged or released, except with the prior written consent of the parties.

Severance

- 47.0 Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provisions of this contract.