

AUST COMPETITION &  
CONSUMER COMMISSION  
BRISBANE  
13 AUG 2015

Our Ref. JW:MO:543864

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10 August 2015

Australian Competition and Consumer Commission  
PO Box 12241  
George Street Post Shop  
Brisbane Qld 4003

Dear Sir/Madam

**Connect Apartments - Third line forcing notification**

We act for Felix Nominees Pty Ltd A.C.N. 603 433 076 (**Developer**).

Please find **enclosed** a Form G exclusive dealing notification, which is submitted in accordance with sub-section 93(1) of the *Competition and Consumer Act 2010*.

**Proposed conduct**

The notification relates to the supply of residential units and the introduction of tenants to buyers of those units at 12 - 18 Felix Street, Lutwyche. The entitlement to be introduced to a tenant or otherwise receive compensation is conditional upon, inter alia, appointing a third party letting agent authorised by the Developer.

The relevant clause for inclusion in the off-the-plan unit sale contract is attached to the Form G and marked "Special Condition" (**Tenant Introduction Condition**). Depending on the particular development or sale, the commercial terms of the Tenant Introduction Condition might vary, but not the requirement to appoint a third party letting agent authorised by the Developer.

**Application of the Tenant Introduction Condition**

The sale of units in any development is not in any way conditional on the buyer having to rent out the unit or engaging the third party letting agent to do so.

Buyers always have the following options available to them:

- (a) Some buyers will acquire a residential unit and reside in it as an owner occupier. In those circumstances, the Tenant Introduction Condition will not apply, that is, the acquisition of the residential unit is not in any way conditional on the letting of the unit or engaging the third party letting agent.
- (b) Some buyers will acquire a residential unit for the purposes of investment and will resolve to rent their unit. In those circumstances, the

Adelaide  
Alice Springs  
Brisbane  
Canberra  
Darwin  
Melbourne  
Norwest  
Perth  
Sydney

buyer may either:

- (i) appoint their own agent to find and place a tenant on terms and conditions negotiated between the buyer and its appointed agent; or
- (i) appoint the third party letting agent authorised by the Developer on terms and conditions negotiated between the buyer and the third party letting agent.

In the event the buyer appoints the third party letting agent authorised by the Developer, the buyer will be entitled to have a tenant sourced for them within a certain period of time and at a particular rental rate, failing which the Developer will pay the buyer compensation (**Introduction Service**).

#### **Purpose of clause**

The Developer has an interest in ensuring that occupancy rates remain high and that buyers have an opportunity to obtain a reasonable rate of return on their investment. By doing this, the Developer ensures the success of not only the relevant development but also future developments produced by it. The Developer's brand would be adversely affected if complaints were made by buyers regarding low occupancy rates and poor rental returns on its developments.

The Developer is only prepared to undertake the obligation of introducing a tenant to the buyer or otherwise incur the cost of paying compensation, where the Developer knows that a suitably qualified, experienced, organised and motivated third party letting agent is engaged. The clause has been drafted so as to go no further than is necessary to protect against this risk and to protect the Developer's brand.

#### **Effect of clause**

The Tenant Introduction Condition will affect only a subset of those persons acquiring a unit within any development. The right to the introduction service and/or compensation is for a limited term, usually about 3 months following settlement of the unit purchase, but on a few occasions up to 2 years after settlement.

The conduct will have no adverse effect on price.

Please find enclosed a cheque in the sum of \$100.00, representing the notification fee.

If you have any queries, please do not hesitate to contact us.

Yours sincerely



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BRISBANE

13 AUG 2015

## Form G

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

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, 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.

### 1. Applicant

(a) **Name of person giving notice:**

*(Refer to direction 2)*

N98491

Felix Nominees Pty Ltd A.C.N. 603 433 076 (**Developer**)

(b) **Short description of business carried on by that person:**

*(Refer to direction 3)*

Developer is an Australian property development company that develops land and supplies residential units to owner occupiers and investors.

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

Felix Nominees Pty Ltd A.C.N. 603 433 076  
c/- Building One, 2404 Logan Road  
EIGHT MILE PLAINS QLD 4113

### 2. Notified arrangement

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

The supply of residential units and the introduction of tenants to buyers of units in developments carried out by the Developer in Brisbane in the suburb of Lutwyche.

(b) **Description of the conduct or proposed conduct:**

*(Refer to direction 4)*

Developer proposes to offer for sale, units in its development(s) pursuant to an off-the-plan sales contract containing a special condition (**Tenant Introduction Condition**).

Pursuant to the Tenant Introduction Condition, in the event the buyer elects to rent out the unit, and on the condition the buyer appoints the third party letting agent authorised by the Developer, inter alia, the Developer offers to introduce a tenant that will rent the premises at an agree rate, failing which the Developer will pay the buyer compensation.

The entitlement to be introduced to a tenant or otherwise receive compensation is conditional upon the buyer, inter alia, appointing a third party letting agent authorised by the Developer.

**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)*

Actual and potential buyers who acquire units in development(s) from the Developer for rental investment purposes.

**(b) Number of those persons:**

**(i) At present time:**

Developer proposes to make this offer to some prospective buyers.

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

Not known.

**(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)*

*Benefit to buyers:* Such an arrangement is pro-competitive in that it invites letting agents to compete for the business by providing a timely and pro-active service at a highly competitive price, thereby enhancing consumer welfare.

The proposed conduct will allow relevant buyers to acquire units for investment purposes in the development, if they do so with a view to renting the unit, and to do so without the transaction costs associated with sourcing their own letting agent and negating the risk of a period of non-occupancy post settlement of their acquisition.

A search of realestate.com indicates that there are:

1. 8 letting agents whose business is located in Lutwyche; and
2. 17 letting agents currently offering letting agency services for units in Lutwyche.

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

The relevant facts are set out in section 4(a) above.

The relevant clause of the off-the-plan unit sale contract is attached hereto and marked "Special Condition".

**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 relevant market likely to be affected by the proposed conduct is the market in Australia for the supply of off-the-plan residential units.

Competition in this market is vigorous with a large number of suppliers and low barriers to entry.

**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 conduct will have no adverse effect on price.

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

See 6(a) above.

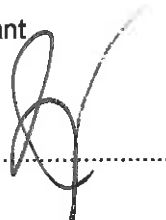
**7. Further information**

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

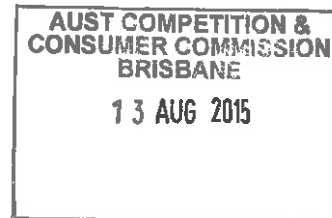
Jason Warat  
HWL Ebsworth Lawyers  
GPO Box 292  
Brisbane QLD 4001  
Telephone: (07) 3002 6749

Dated: 10 August 2015

Signed by/on behalf of the applicant



.....  
**Jason Warat**  
Partner  
HWL Ebsworth Lawyers



## **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 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 *Trade Practices Act 1974* 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.

## **1. Rental Compensation – Introduction of Tenants**

### **1.1 Introduction of Tenants**

If:

- (a) the Buyer complies strictly with the Contract Terms and in particular settles this Contract on the due Settlement Date without extension; and
- (b) before Settlement, the Buyer appoints the letting agent authorised by the Body Corporate or another agent approved by the Seller as its managing agent for the Property (“Managing Agent”); and
- (c) the Buyer effects, on or before Settlement, landlord protection insurance, including at least 14 weeks cover for loss of rental from a defaulting tenant; and
- (d) within 7 days after the Settlement Date, the Property is ready for immediate occupancy, including all curtains and other fit-out usually supplied by a landlord for similar apartments offered for rent,

the Seller must, during the Term, introduce to the Buyer, and, if the Property becomes vacant, further introduce, tenants who are prepared to enter into a tenancy agreement for the rental of the Property under which they pay the Weekly Rental Amount as rent. If any of the terms specified above are not strictly complied with, this Special Condition no longer applies.

### **1.2 Consequences of Breach**

If:

- (a) the Seller fails to introduce tenants in accordance with sub-clause 1 of this Special Condition; or
- (b) the Seller introduces tenants who pay less rental per week than the Weekly Rental Amount; and
- (c) the Buyer is unable to otherwise secure tenants during the Term who pay the Weekly Rental Amount,

then the Seller must pay compensation to the Buyer in accordance with sub-clause 3 of this Special Condition. The Buyer has no further Claim against the Seller.

### **1.3 Payment of Compensation**

The following conditions apply to the payment of compensation by the Seller:

- (a) compensation will be calculated from and including the Compensation Start Date.
- (b) compensation will be payable in arrears at the end of each calendar month and will be the Weekly Rental Amount less any gross rental received by or payable to the Buyer for that period.
- (c) compensation is payable pro rata in respect of periods less than a week.
- (d) claims for compensation must be made:
  - (i) to the Seller direct;
  - (ii) not later than 60 days after the date the Seller’s obligation to pay compensation terminates under this Special Condition to be valid; and
  - (iii) in the Seller’s prescribed claim form which is available from the Seller on request.

#### 1.4 Termination of Obligation to pay Compensation

The Seller's obligation to pay compensation terminates on the earlier of the date:

- (a) the Buyer appoint an agent other than the Managing Agent; or
- (b) the Buyer no longer maintains landlord protection insurance contemplated in sub-clause 1(c) of this Special Condition; or
- (c) the Property ceases to be ready for occupancy; or
- (d) the Buyer ceases to offer the Property, if vacant, for rent for the Weekly Rental Amount or other lesser amount approved by the Seller; or
- (e) the Buyer itself commences occupation of the Property; or
- (f) the Buyer enters into a contract to sell the Property; or
- (g) the Buyer loses effective control over the Property (for example, by a mortgagee, receiver or liquidator taking possession of the Property); or
- (h) of expiry of the Term.

#### 1.5 Entitlement to Compensation is Personal

The Buyer's entitlement to compensation under this Special Condition is personal to the Buyer. The Buyer cannot transfer that entitlement to anyone who buys the Property from the Buyer or to whom the Buyer assigns or purports to assign the benefit of this Contract.

#### 1.6 Authority to Seller

The Buyer authorises the Seller to take such steps as the Seller considers necessary in its discretion to enable the Seller to introduce tenants to the Buyer including, without limitation, advertising the Property for rental at any amount determined by the Seller.

#### 1.7 Acceptance of Tenants Introduced by Seller

To qualify and continue to qualify for compensation under this Special Condition, the Buyer must, at all times, accept as tenants any parties put forward by the Seller or the Managing Agent, even if those parties put forward are to pay rental less than the Weekly Rental Amount. If the Buyer fails to accept parties as tenants in accordance with this Special Condition, the Seller's obligation to pay compensation terminates from the date the relevant party was introduced to the Buyer.

#### 1.8 Definitions

For the purposes of this Special Condition:

- (a) "Compensation Start Date" means the date TBA days after the Settlement Date;
- (b) "Term" means the period of TBA months starting from the Compensation Start Date; and
- (c) "Weekly Rental Amount" means an amount calculated by application of the following formula:

$$\text{Weekly Rental Amount} = \frac{\text{Price less the amount or value of any rebates and incentives} \times \text{TBA}\%}{52}$$

52

Buyer 1 Initials

Buyer 2 Initials

Seller's Initials