



Contract of sale

Lot A, 45 Valley Lake Boulevard, Keilor East, Victoria

—

Development Victoria ABN 61 868 774 623 (**Vendor**)

[***Name of purchaser (including ABN/ARBN/ACN if applicable)***] (**Purchaser**)

Form 1

Estate Agents Act 1980 Regulation 5(a)

CONTRACT OF SALE OF REAL ESTATE

Part 1 of the standard form of contract prescribed by the former *Estate Agents (Contracts) Regulations 2008*

Property Address: Lot A, 45 Valley Lake Boulevard, Keilor East, Victoria 3033

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 conditions set out in this contract.

The terms of this contract are contained in the:

- * Particulars of sale;
- * Special conditions, if any; and
- * General conditions;

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 section 32 statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962 (Vic)* in accordance with Division 2 of Part II of that Act; and
- * 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.

SIGNED BY THE PURCHASER _____ on _____ / _____ 20

Print name of person signing: **See signing page**

State nature of authority if applicable (e.g. "director", "attorney under power of attorney"): **See signing page**

This offer will lapse unless accepted within 5 clear business days (3 days if none specified).

SIGNED BY THE VENDOR _____ on _____ / _____ 20

Print name of person signing: **See signing page**

State nature of authority if applicable (e.g. "director", "attorney under power of attorney"): **See signing page**

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

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period (Section 31 *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 the 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 a publicly advertised auction or on the day on which the auction was held;
- * you bought the property within 3 clear business days **before** a publicly advertised auction was to be held;
- * you bought the property within 3 clear business days **after** a publicly advertised auction was held;
- * the property is used primarily for industrial or commercial purposes;
- * the property is more than 20 hectares in size and is used primarily for farming;
- * you and the vendor have previously signed a contract for sale of the same land in substantially the same terms; or
- * you are an estate agent or a corporate body.

Signing page

Executed for and on behalf of **Development Victoria** under delegation of the Board in accordance with section 11 of the *Development Victoria Act 2003* (Vic) by its authorised signatory:



Signature of **PETER HOOD**

SENIOR DEVELOPMENT DIRECTOR, URBAN COMMUNITIES

[Purchaser's execution clause to be inserted]

Form 2

Estate Agents Act 1980 Regulation 5(a)

Contract of Sale of Real Estate—General Conditions

Part 2 of the standard form of contract prescribed by the former *Estate Agents (Contracts) Regulations 2008*

TITLE

1. Encumbrances

- 1.1 The purchaser buys the property subject to:
- (a) any encumbrance shown in the section 32 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.
- 1.3 In this general condition 'section 32 Statement' means a statement required to be given by a vendor under section 32 of the ***Sale of Land Act 1962*** in accordance with Division 2 of Part II of that Act.

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 former *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 section 32 Statement required to be given by the vendor under section 32 of the ***Sale of Land Act 1962*** in accordance with Division 2 of Part II of that Act.
- 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.
- 7.2 The vendor must advise the purchaser of the vendor's date of birth solely for the purposes of enabling the purchaser to search the Personal Properties Securities Register for any security interests affecting the personal property for which the purchaser is entitled to a release, statement, approval or correction in accordance with General Condition 7.4. However, the vendor is only required to so advise if the purchaser makes the request at least 21 days before the Due Date. The purchaser must keep the vendor's date of birth secure and confidential.
- 7.3 If the purchaser is given the details of the vendor's date of birth under General Condition 7.2, the purchaser must:
- (a) only use the vendor's date of birth for the purposes specified in General Condition 7.2; and
 - (b) keep the date of birth of the vendor secure and confidential.
- 7.4 The vendor must ensure that, at or before settlement, the purchaser receives:
- (a) a release from the secured party releasing the personal property from the security interest; 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 settlement; or
 - (c) a written approval or correction in accordance with section 275(1) of the **Personal Property Securities Act 2009 (Cth)** indicating that on settlement the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5 Subject to General Condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of any item of personal property:
- (a) that:
 - (i) the purchaser intends to use predominantly for personal domestic or household purposes; and
 - (ii) 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; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind,
- 7.6 The vendor is obliged to ensure the purchaser receives a release, statement, approval or correction in respect of personal property described in General Condition 7.5 if –
- (a) the personal property is of a kind that the regulations provide may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7 A release for the purposes of General Condition 7.4(a) must be in writing.
- 7.8 A release for the purposes of General Condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.
- 7.9 If the purchaser receives a release under General Condition 7.4(a), the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10 In addition to ensuring a release is received under General Condition 7.4(a), the vendor must also ensure that, on or before settlement, the purchaser records a written undertaking from a secured party to register a financing charge statement to reflect that release if the property being released includes personal property of a kind that is described by serial number in the Personal Property Securities Register.
- 7.11 The purchaser must advise the vendor of any security interest that is registered on or before the date of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released at least 21 days before the due date for settlement.
- 7.12 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 if the purchaser does not provide an advice under General Condition 7.10.
- 7.13 If settlement is delayed under General Condition 7.12, 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.

- 7.14 The vendor is not required to ensure that the purchaser receives a release in respect of the land. This General Condition applies despite General Condition 7.1.
- 7.15 Words and phrases which are defined in the **Personal Property Securities Act 2009 (Cth)** have the same meaning in General Condition 7 unless the context requires otherwise.
- 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'.

MONEY

10. Settlement

- 10.1 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.
- 10.2 The vendor's obligations under this general condition continue after settlement.
- 10.3 Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. Payment

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under section 9(3) of the **Banking Act 1959 (Cth)** is in force.
- 11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

12. Stakeholding

12.1 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 does 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 1962** have been satisfied.

12.2 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.

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

13. GST

13.1 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 of land on which a farming business is carried on 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 part of it) does not satisfy the requirements of section 38–325 of the GST Act.

13.2 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'.

13.3 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.

13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

- (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.

13.5 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.

13.6 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.

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

13.8 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
- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
 - (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the **Electronic Transactions (Victoria) Act 2000**.
- 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 prepaid 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; or
 - (d) by email.
- 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 transferee, 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 a 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.

PARTICULARS OF SALE

VENDOR	Development Victoria ABN 61 868 774 623 Level 9, 8 Exhibition Street, Melbourne VIC 3000		
VENDOR'S LEGAL PRACTITIONER OR CONVEYANCER	MinterEllison Level 17N, 525 Collins Street, Melbourne VIC 3000 Ref: GSR AP 1280599 Email: georgia.rowell@minterellison.com DX: 204 Melbourne Tel: (03) 8608 2997		
PURCHASER	[name of purchaser (including ABN/ARBN/ACN if applicable)] [address of purchaser]		
PURCHASER'S LEGAL PRACTITIONER OR CONVEYANCER	[purchaser's legal practitioner or conveyancer name] [address] Ref: Email: DX: Tel: Fax:		
PROPERTY	The Land together with any improvements and fixture on or under the Land known as Lot A, on PS531743J, known as 45 Valley Lake Boulevard, Keilor East, Victoria 3033		
LAND	Lot A on plan of subdivision PS 831738J being the land described in certificate of title volume 12210 folio 241		
GOODS SOLD WITH THE PROPERTY (General Condition 2.3(f))	Nil		
PAYMENT (General Condition 11)	Price Deposit Balance	\$[amount] \$[amount] \$[amount]	plus GST 10% of the Price on the Day of Sale (of which 1% of the Price has been received) payable at settlement
GST	The price is exclusive of GST (if any) unless the words ' GST inclusive ' appear in this box		<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
SETTLEMENT (General Condition 10)	Settlement is due on the later of: (a) 30 days from the Day of Sale; and (b) 7 May 2021.		<div style="border: 1px solid black; height: 100px; width: 100%;"></div>

	<p>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.</p> <p>If 'subject to lease' then particulars of the lease are: N/A</p>	<div data-bbox="1249 174 1428 224"></div>
<p>ELECTRONIC CONVEYANCING (Special Condition 25)</p>	<p>Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and Special Condition 25 applies, if the box is marked 'EC'.</p>	<div data-bbox="1249 369 1428 418">EC</div>
<p>SPECIAL CONDITIONS</p>	<p>This contract does not include any Special Conditions unless the words 'Special Conditions' appear in this box.</p>	<div data-bbox="1249 533 1428 607">Special Conditions</div>
<p>DAY OF SALE</p>		

Contract of sale

Lot A, 45 Valley Lake Boulevard, Keilor East, Victoria

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Special Conditions

2. Defined terms & interpretation

2.1 Defined terms

In these Special Conditions:

Act means the *Sale of Land Act 1962* (Vic).

Authority means any government or any public, statutory, governmental, semi-governmental, local governmental, municipal or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to an Act of Parliament.

Balance means the balance of the Price as set out in the Particulars of Sale

Bank means:

- (a) an Australian-owned bank;
- (b) a foreign subsidiary bank; or
- (c) a branch of a foreign bank,

on the list, current on the Day of Sale, of authorised deposit-taking institutions regulated by the Australian Prudential Regulation Authority.

Business Day means any day (except a Saturday or Sunday) on which banks are open for business in Melbourne.

Contaminant means a solid, liquid, gas, odour, temperature, sound, vibration or radiation or substance which makes or may make the Land:

- (a) unfit or unsafe for habitation or occupation by humans or animals;
- (b) degraded in its capacity to support plant life;
- (c) otherwise environmentally degraded;
- (d) not comply with any Environmental Law,

and '**Contamination**' has a corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth).

Council means the City of Moonee Valley.

Council Letter means the letter in Schedule 2.

Due Date means the date settlement is due as set out in the Particulars of Sale or such other date agreed to by the parties.

Environmental Law means a law regulating or relating to the environment.

EOI means the expression of interest published by the Vendor inviting parties to submit proposals for the acquisition and development of the Land for medium density residential purposes and/or any publicly accessible facility approved by the Vendor.

General Conditions are the conditions set out in Form 2 in the Schedule to the *Estate Agents (Contracts) Regulations 2008* (Vic).

Goods are the goods (if any) specified in the Particulars of Sale and sold with the Property under this contract.

Guarantee means the guarantee and indemnity attached to this contract as Annexure A.

Guarantor means each person or corporation that is liable for the performance of the Purchaser under this contract pursuant to General Condition 20.

Improvement means any building, plant, fence, equipment, fixture, fitting or chattel constructed or to be constructed on the Land.

Insolvency Event means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up or an order appointing a liquidator or provisional liquidator, in respect of the body corporate is made, or a liquidator or provisional liquidator is appointed whether or not under an order;
- (b) except to reconstruct or amalgamate while solvent on terms approved by the other party, a body corporate enters into or resolves to enter into a scheme of arrangement or composition with or assignment for the benefit of all or any class of its creditors or it proposes a re-organisation, moratorium or other administration involving any event;
- (c) a body corporate that resolves to wind itself up or otherwise to dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved;
- (d) a body corporate is or states that it is insolvent;
- (e) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is or makes a statement from which it may be reasonably deduced by the other party that the body corporate is the subject of an event described in section 459(C)2 (a) to (f) or section 585 of the *Corporations Act 2001*;
- (g) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;
- (h) a body corporate becomes an insolvent under administration as defined in Section 9 of the *Corporations Act 2001* or action is taken which could result in that event;
- (i) a resolution is passed to appoint an administrator or an administrator is appointed to a body corporate;
- (j) a receiver or a receiver and manager is appointed to a body corporate;
- (k) a mortgagee takes possession of any one of the assets or undertakings of a body corporate;
- (l) a person becomes insolvent under administration as defined in section 9 of the *Corporations Act 2001* or action is taken that would result in that event;
- (m) a person becomes bankrupt;
- (n) anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction,

and if the Purchaser is a natural person, **Insolvency Event** means that the Purchaser:

- (o) dies; or
 - (p) becomes insolvent under administration, as this term is defined in the Corporations Act,
- and, in this definition only, the word **Purchaser** includes:

- (q) any corporation which is a Related Body Corporate of the Purchaser; and
- (r) each Guarantor.

Interest means the interest (if any) that accrues on the Deposit less the taxes, charges and fees charged on, or attracted by, the Deposit or by the interest earned on it.

Law means any law (including principles of law or equity established by decisions of courts) that applies in Victoria, and any rule, regulation, ordinance, scheme, by-law, local law, statutory instrument, control, restriction, requirement, guideline, approval, permit, licence or direction made under a law by any Authority that relates to or affects or may affect the Property or its development or use whether in force at the Day of Sale or enacted, made or issued after the Day of Sale.

Planning Permit means a planning permit under the *Planning and Environment Act 1987* (Vic) issued by the Council to develop and use the Land for medium density residential housing or other purposes approved by the Vendor..

Planning Permit Annexures means all design documents, drawings, specifications and other information (including a site plan, floor plans and elevations) to form part of and accompany the Planning Permit Application.

Planning Permit Application means the application by or on behalf of the Purchaser for the Planning Permit and any other permit that may be required for the Purchaser's Project.

Planning Restriction means any restriction on the use or development of the Land under any planning scheme, statute, regulation, local law or permit condition or imposed by the Council or any other authority empowered to control the use or development of the Land.

Proposal means the submission made by the Purchaser in response to the EOI as set out in Schedule 1.

Purchaser's Project means the project and works to be carried out by the Purchaser in accordance with the Proposal.

Purchaser Rights means:

- (a) making requisitions or objections;
- (b) claiming compensation;
- (c) rescinding or purporting to rescind;
- (d) calling on the Vendor to amend title or bear the cost of doing so;
- (e) seeking a reduction in the Price;
- (f) refusing or delaying payment of the whole or part of the Price;
- (g) retaining the whole or part of the Price;
- (h) postponing settlement;
- (i) avoiding obligations,

under this contract.

Related Body Corporate has the meaning given to it in the Corporations Act.

S&P means Standard & Poor's (Australia) Pty Ltd.

Settlement Date means the date on which settlement occurs as set out in the Particulars of Sale

Special Conditions means these special conditions.

Transfer means the instrument of transfer referred to in General Condition 6.

Valley Lake means the residential development of land at Valley Lake, Niddrie being developed and managed by the Vendor.

Vendor's Estate Agent means the estate agent or estate agents for the Vendor, if any, whose details are set out in the Particulars of Sale.

Vendor's Lawyers means the Vendor's legal practitioner.

2.2 Interpretation

In this contract, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this contract;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a Special Condition, schedule or annexure is a reference to a Special Condition of, or schedule or annexure to, this contract and a reference to this contract includes all schedules and annexures;
- (e) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (f) a reference to **A\$, \$A, dollars** or **\$** is a reference to Australian currency;

- (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (h) a reference to a statute includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2.3 General

- (a) If a party comprises two or more persons, the provisions of this contract binding that party bind those persons jointly and severally. Any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally.
- (b) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this contract or any part of it.
- (c) A construction of this contract that results in all of its provisions being enforceable is to be preferred to a construction that does not give this result.
- (d) If, despite the application of Special Condition 2.3(c), a provision of this contract is illegal or unenforceable then:
 - (i) if the provision would be legal and enforceable if a word or words were omitted, that word or those words are severed; and
 - (ii) in any other case, the whole provision is severed, and the remainder of this contract continues in force.
- (e) This contract may only be altered in writing signed by each party.
- (f) Any condition of this contract which is capable of taking effect after settlement will not merge in the transfer of the Property but will continue in full force and effect.
- (g) Time shall remain the essence of this contract despite any waiver given or indulgence granted by a non-defaulting party to the party in default.
- (h) This contract constitutes the entire agreement between the parties about its subject matter. In relation to that subject matter, this contract supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by or on behalf of a party.
- (i) Waiver of any provision or right under this contract:
 - (i) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in any written waiver.
- (j) The obligations imposed and benefits conferred under this contract on each of the parties are binding on and enure for the benefit of the respective parties and each of their respective legal personal representatives, successors and permitted assigns.
- (k) A reference to time is to the State of Victoria time.

2.4 Variation of General Conditions

- (a) General Condition 5 is deleted.
- (b) General Condition 6 is varied by deleting the word 'days' in line one and replacing it with '10 Business Days'.
- (c) General Condition 7.14 is replaced with:

'7.14 The vendor is not required to ensure that the purchaser receives a release from each secured party or chargee releasing the land and/or fixtures affixed to the land from any security or encumbrance in favour of that secured party or chargee.'
- (d) General Conditions 11.4, 11.5 and 11.6 are deleted.

- (e) General Condition 12.4 is added as follows:
- '12.4 Where the Purchaser is deemed by section 27(7) of the Act to have given the deposit release authorisation referred to in section 27(1), the Purchaser is also deemed to have accepted title in the absence of any prior express objection to title.'
- (f) General Condition 13 is deleted.
- (g) General Condition 15.2(c) is deleted.
- (h) General Condition 15.3 is added:
- '15.3 The Purchaser must provide copies of all certificates and other information used to calculate the adjustments under General Condition 15 if requested by the Vendor.'
- (i) General Condition 17.1 is deleted and replaced by the following:
- '17.1 Any document sent by:
- (a) express post is taken to have been served on the next Business Day after posting unless proved otherwise;
 - (b) priority post is taken to have been served on the fourth Business Day after posting, unless proved otherwise;
 - (c) regular post is taken to be served on the seventh Business Day after posting unless proved otherwise;
 - (d) email is taken to have been served on the first to occur of:
 - (i) receipt by the sender of an email acknowledgement from the recipient's email system showing that the notice has been delivered to an email address stated in the Particulars of Sale;
 - (ii) the time that the notice enters an information system which is under the control of the recipient; and
 - (iii) the time that the notice is first opened or read by the intended addressee,however if the sender receives an out of office reply that states the recipient is out of the office until a later date, the notice will only be taken to be served on that later date;
 - (e) facsimile, it is taken to have been served at the same time recorded on the transmission report indicating successful transmission of the entire notice,
- but if the result is that a notice would be taken to be served on a day that is not a business day in the place to which the notice is sent or later than 4.00pm (local time of the recipient) at the place to which the notice is sent it will be taken to have been duly served at 9.00am on the next business day at such place.'
- (j) General Condition 17.2 is deleted and replaced with the following:
- '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 and may be made or signed by the legal practitioner or conveyance 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) subject to General Condition 17.2(d) in any manner authorised by law or the Supreme Court for serving of documents, including any manner authorised for service on or by a legal practitioner whether or not the person serving or receiving the document is a legal practitioner; or
 - (d) by email unless the notice or document required to be served relates to a dispute or termination; or

- (e) transmitted by facsimile.'
- (k) General Condition 17.5 is added:
'17.5 The expression 'document' includes 'demand' and 'notice' and service includes 'give' in this contract;'
- (l) General Condition 18 is deleted.
- (m) General Condition 24.4, 24.5 and 24.6 are deleted.

3. Identity

3.1 Admission of identity

The Purchaser admits that the Land is identical with the land described in the title particulars set out in the Particulars of Sale.

3.2 No requisitions objections or compensation

Except to the extent permitted by Law, the Purchaser must not exercise any Purchaser Rights because of any misdescription of the Land whether it is in relation to area, measurements or occupation.

3.3 No title amendments

The Purchaser may not call on the Vendor to amend title or to bear or to contribute to the cost of amending title.

4. Planning

4.1 Purchase subject to restrictions

The Purchaser buys the Property subject to any Planning Restriction or any Law imposed or prescribed that restricts the use or development of the Property or otherwise affects the Property.

4.2 Restrictions not defects in title

No Law or Planning Restriction constitutes a defect in the Vendor's title to the Property or affects the validity of this contract.

4.3 No compensation etc

The Purchaser must not exercise any Purchaser Rights because of any Planning Restriction.

5. Guarantee

5.1 Corporate guarantee

The Purchaser must contemporaneously with the execution of this contract procure the proper completion and execution of the Guarantee by the Guarantor.

5.2 Application

This Special Condition is an essential term of this contract and does not limit the application of General Condition 19.

6. Entire Agreement

6.1 Acknowledgment

The Purchaser acknowledges that:

- (a) this contract is the sole repository of the agreement between the parties;

- (b) there are no terms, conditions, representations or warranties relating to the sale of the Land which have been relied upon by the Purchaser in entering into this contract except those included in this contract;
- (c) the Purchaser has not relied on any information in any brochure, investment report, information memorandum, sales material or advertisement about the Land relating to:
 - (i) its area or measurements;
 - (ii) any description of any improvements, chattels, fixtures or fittings on the Land; and
- (d) the Purchaser has relied on its own inspection and inquiries in purchasing the Land and Improvements sold with the Land.

6.2 No warranties

The Vendor and the agents of the Vendor have not made any representation or given any warranty:

- (a) about the condition or quality of the Improvements, the Property or the services connected or available to it;
- (b) that the Property is suitable for any purpose which the Purchaser may have indicated as its intention to pursue;
- (c) that any permit of any nature has been obtained or is available from any relevant authority;
- (d) that any other land is available for acquisition (unless otherwise indicated in this contract);
- (e) as to the accuracy of any information provided by or on behalf of the Vendor to the Purchaser including, without limitation, any information in any brochure, investment report, information memorandum, sales material or advertisement about the Land.

6.3 No compensation

The Purchaser must not exercise any Purchaser Rights because the Improvements do not comply with the *Building Act 1993*, the Building Regulations 2006, the Building Code of Australia or any other statutes, regulations, rules or local laws or because of their state of repair and condition.

7. Interest on Default

7.1 Interest

If the Purchaser defaults in paying the Price or any part of it or the Interest or any part of it when it is due, the Purchaser must pay interest at a rate four per cent higher than the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* on the money overdue during the period of default.

7.2 Interest does not prejudice other rights

The Purchaser's obligation to pay interest does not affect any of the Vendor's other rights.

7.3 Time remains of the essence

The Purchaser's obligation to pay interest under special condition 7.1 does not mean that time is not of the essence for the performance of the Purchaser's obligations under this contract.

7.4 General Condition 26 inapplicable

General Condition 26 does not apply to this contract

8. Waiver

An express or implied waiver of a breach of any obligation, provision or condition of this contract does not operate as a waiver of any other breach of the same or any other obligation, provision or condition of this contract.

9. Time of the Essence

Time remains of the essence in this contract despite any waiver given or indulgence granted by the Vendor to the Purchaser.

10. Deposit investment

10.1 Payment of Deposit

- (a) The Purchaser must pay the Deposit to the Vendor's Lawyers within the time required by this contract.
- (b) The Vendor and Purchaser authorise the Vendor's Lawyers to invest the Deposit in a controlled moneys account at a Bank until settlement or until such earlier time as the Deposit is lawfully released in accordance with the *Sale of Land Act 1962* (Vic). The Deposit is invested at the risk of the party who becomes entitled to it. The Deposit may be invested by the Vendor's Lawyer, either at call or on a term deposit. The Deposit is invested at the risk of the party who becomes entitled to it.

10.2 Tax file number and income tax payments

- (a) Within 7 days after the Day of Sale, each party must notify the Vendor's Lawyers in writing of its tax file number. Each party authorises the Vendor's Lawyers to give its tax file number to the Bank with which the Deposit is to be invested. If the Purchaser does not give its tax file number to the Vendor's Lawyers and if the Purchaser is entitled to a refund of the Deposit and interest accrued on the Deposit, the Vendor, the Vendor's Lawyers or the Vendor's Lawyer's Bank may retain withholding tax due on the amount payable to the Purchaser.
- (b) If the Vendor's Lawyer is subject to income tax on interest accrued on moneys deposited into the controlled moneys account under the *Income Tax Assessment Act 1936* (Cth), the parties authorise the Vendor's Lawyer to deduct from the interest accrued the amount of such income tax plus the reasonable anticipated costs of preparation of tax returns. The parties acknowledge that any such income tax is payable by the Vendor's Lawyer at the rate imposed by law and without any right of refund to either party.
- (c) The parties agree that if the interest accrued is disbursed to either party and the Vendor's Lawyer is or subsequently becomes subject to income tax in respect of any part of the interest accrued and disbursed, the party to whom the interest accrued was disbursed shall immediately on demand reimburse to the Vendor's Lawyer the amount of such income tax.
- (d) The parties must not make any claim on the Vendor's Lawyers for any matter arising out of Special Condition 10.2.

10.3 Entitlement to interest

Interest will belong to the Vendor upon the Vendor being entitled to the release of the Deposit unless the Purchaser becomes entitled to a refund of the Deposit in which case Interest will belong to the Purchaser.

11. Further Assurances

The Vendor and the Purchaser must sign any documents and do anything else reasonably necessary to give effect to the terms of this contract.

12. Nomination

12.1 Limited nomination right

The Purchaser may only nominate a substitute purchaser:

- (a) with the prior written consent of the Vendor; and

- (b) if the Purchaser provides to the Vendor:
 - (i) the Guarantee signed by a person or company approved by the Vendor (amended as necessary by reason of the nomination); and
 - (ii) a written acknowledgment from the Guarantor that the nomination of the substitute purchaser does not vitiate the Guarantor's obligations.

12.2 When nomination not allowed

- (a) No nomination is allowed if the Purchaser defaults.
- (b) No further nomination is allowed if the originally named Purchaser has validly nominated a substitute purchaser.

13. Environmental Matters

13.1 Warranty by Vendor

The Vendor makes no representation and gives no warranty regarding the environmental condition of the Land, including whether there is any Contaminant in, on or under the Land or in any Improvement, on or under the Land.

13.2 Purchaser's inspection & acknowledgements

The Purchaser acknowledges that:

- (a) it has inspected the Land and purchased it in its present condition irrespective of whether there is any Contaminant in, on or under the Land or in any improvement or fixture or fitting in, on or under the Land;
- (b) it has relied solely upon its own enquiries in entering into this contract and has not relied on any environmental reports which the Vendor or his agents may have provided to the Purchaser;
- (c) any environmental reports which the Vendor or his agents may have provided to the Purchaser have been provided for information purposes only without any representation or warranty being made or given as to their completeness, accuracy or reliability;
- (d) the Vendor is not required to remove or treat or otherwise deal with any Contaminant which may be in, on or under the Land or in any improvement or fixture or fitting in, on or under the Land.

13.3 No objections or compensation

The Purchaser must not exercise any Purchaser Rights because of the presence of any Contaminant in, on or under the Land or in any improvement or fixture or fitting in, on or under the Land.

13.4 Indemnity and release

On and from the Settlement Date, the Purchaser assumes all responsibility for and releases and indemnifies the Vendor to the fullest extent possible at Law against all liability for any Claim resulting from or in connection with:

- (a) the presence of any Contamination found in, on, above or under the Property or which has emanated from the Land or which has migrated onto the Land (regardless of the cause of such migration or the ownership of the adjoining land);
- (b) all breaches of and non-compliances with any Environmental Laws or the requirements of any Authority;
- (c) the conduct and performance of any work required by an Authority in respect of any Contamination under any Environmental Law;
- (d) any Costs made or payable as a result of complying with or breaching any Environmental Laws, including the Costs of clean-up of any Contamination; and
- (e) any other liability arising under an Environmental Law concerning the Property.

14. Goods and services tax

14.1 Interpretation

- (a) General Condition 13 is deleted and replaced with this Special Condition 14.
- (b) Words or expressions used in this Special Condition 14 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in this Special Condition.

14.2 Consideration is GST exclusive

Any consideration to be paid or provided to the Vendor for a supply made by the Vendor under or in connection with this contract, unless specifically described in this contract as 'GST inclusive', does not include an amount on account of GST.

14.3 Gross up of consideration

Despite any other provision in this contract, if the Vendor makes a supply under or in connection with this contract on which GST is payable (not being a supply the consideration for which is specifically described in this contract as '**GST inclusive**' the consideration payable or to be provided for that supply under this contract but for the application of this Special Condition (**GST exclusive consideration**) is increased by, and the Purchaser must also pay to the Vendor,:

- (a) an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
- (b) in the case of a taxable supply on which the margin scheme is to be applied to work out the amount of GST on the supply, an amount worked out in accordance with the provisions of section 75-10 of the GST Act.

in each case the (**GST Amount**)

- (c) the GST Amount must be paid to the Vendor by the Purchaser without set off or deduction, at the earlier of when the GST exclusive consideration is payable or within 10 days from the end of the tax period in which the supply is payable by the Vendor under the GST Law (whichever is the earlier), subject to the receipt of a valid tax invoice by the Purchaser.

14.4 Reimbursements (net down)

If a payment to a party under this contract is a reimbursement or indemnification or otherwise calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group that party is a member of (as the case may be), is entitled in respect of that loss, cost or expense.

14.5 Tax invoices

The Vendor will give the Purchaser a tax invoice in respect of a taxable supply made under or in connection with this contract.

15. Consents

- (a) If the Purchaser is or may be obliged to obtain any consent, permit or authority to enter into and perform its obligations under this contract, the Purchaser is obliged to do so before entering into this contract.
- (b) The Purchaser warrants that any necessary consent, permit or authority has been obtained before entering into this contract.

16. Planning Permit Annexures

16.1 Preparation of Planning Permit Annexures

- (a) The Purchaser must, at its cost, prepare and submit a draft of the Planning Permit Annexures to the Vendor for approval before applying for any Planning Permit or building permit to carry out any works on the Land or carrying out any works on the Land.
- (b) The Planning Permit Annexures must be consistent with, and incorporate, the Proposal.

16.2 Approval by Vendor of Planning Permit Annexures

- (a) The Vendor must approve the draft Planning Permit Annexures where they are consistent with the Proposal or reject the draft Planning Permit Annexures (acting reasonably) within 10 Business Days of receipt of the full draft of Planning Permit Annexures:
- (b) If the Vendor does not approve or reject the draft Planning Permit Annexures within the time set out in 16.2(a) the Vendor will be deemed to have approved the draft Planning Permit Annexures.
- (c) If the Vendor rejects the draft Planning Permit Annexures:
 - (i) it must provide reasons for doing so; and
 - (ii) the Purchaser must resubmit the draft Planning Permit Annexures or provide additional draft Planning Permit Annexures (as required) and clause 16.2(a) will again apply.
- (d) The Vendor's approval of the Planning Permit Annexures does not constitute approval by Council or any Authority of the Planning Permit or the Purchaser's Project.
- (e) The Vendor makes no representation and gives no warranty regarding approval by Council or any Authority of the Planning Permit Annexures, including whether Council or any Authority will approve the Planning Permit Annexures or the Purchaser's Project.

16.3 Purchaser remains responsible

The Purchaser is responsible for the correctness, accuracy and sufficiency of the Planning Permit Annexures.

16.4 Purchaser retains responsibility for its works

- (a) No requirement in this contract in any way imposes expressly or by implication any duty, obligation or liability upon the Vendor in relation to any works subsequently carried out by the Purchaser on the Land.
- (b) The Purchaser acknowledges and confirms without reservation that the Purchaser:
 - (i) is relying entirely on its own skill and judgement and that of its employees, consultants and agents in relation to the design, planning and carrying out of any works on the Land; and
 - (ii) is in no way relying upon the skill and judgement of the Vendor or any of its employees, consultants and agents in relation to any works to be carried out on the Land.

16.5 Essential term

Without limiting the essentiality of any other provision, Special Conditions 16.1 is an essential term of the Contract.

17. Planning Permit

17.1 Purchaser to lodge Planning Permit Application

The Purchaser, at its cost, must:

- (a) complete and lodge the Planning Permit Application; and

- (b) provide a copy of it to the Vendor, together with evidence to the reasonable satisfaction of the Vendor that the Planning Permit Application has been lodged with Council.

17.2 Contract not conditional

This contract is not conditional on the Purchaser obtaining the Planning Permit by the Settlement Date or at all.

17.3 No compensation

The Purchaser is not entitled to any compensation or contribution from the Vendor for any costs, fees, expenses or charges paid or incurred in relation to or arising out of the making of the Planning Permit Application or as a result of the operation of the provisions of this special condition.

17.4 Vendor to co-operate

The Vendor must promptly execute all consents, requests and applications reasonably necessary to assist the Purchaser in the Planning Permit Application but such consents, requests and applications are to be prepared at the cost of the Purchaser.

18. Default

18.1 Particular obligations

If:

- (a) the Purchaser breaches:

- (i) Special Condition 5.1; or
- (ii) Special Condition 10.1; or
- (iii) Special Condition 16.1; or

- (b) subject to the *Corporations Act 2001*, an Insolvency Event occurs,

General Condition 27 will not apply to this contract and the Vendor may terminate this contract by notice in writing to the Purchaser at any time after the breach or Insolvency Event occurs.

18.2 If Vendor terminates

If the Vendor terminates this contract under Special Condition 18.1, General Condition 12.2 and General Condition 28.4 will apply as if the Vendor had given notice under General Condition 27 and this contract had been terminated by notice under General Condition 28.2.

18.3 Time remains of the essence

The Purchaser's obligation to pay interest under Special Condition 7 does not mean that time is not of the essence for the performance of the Purchaser's obligations under this contract.

18.4 Additional losses and expenses

If the Purchaser breaches this contract, the Purchaser, in addition to paying interest under Special Condition 7, must pay or reimburse the Vendor each of the following at settlement:

- (a) all legal costs and expenses incurred by the Vendor; and
- (b) if the Property is registered in the name of the Vendor at midnight on 31 December following the Due Date, all of the land tax assessed charged and levied on the Vendor in respect of the Property after the Due Date.

The Purchaser acknowledges that each of these losses and expenses is a reasonably foreseeable loss to the Vendor for the purposes of General Condition 25(a).

18.5 Other rights unaffected

Nothing in this Special Condition 18 limits the rights of the Vendor if the Purchaser defaults under this contract.

18.6 Rescinding party to notify stakeholder

The party rescinding this contract must notify the stakeholder holding the Deposit and instruct the stakeholder to pay the Deposit to the party rescinding this contract in accordance with the terms of this contract. The Vendor and the Purchaser appoint each other as their lawful attorney for this purpose and absolve the stakeholder from any liability when complying with such notice.

19. Indemnity

The Purchaser indemnifies the Vendor against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Vendor) that the Vendor may sustain or incur as a result, whether directly or indirectly, of any breach of this contract by the Purchaser including, a breach in respect of which the Vendor exercises a right to terminate this contract.

20. Purchaser's commitments

20.1 Purchaser Covenants

The Purchaser expressly acknowledges and agrees that:

- (a) the Vendor has entered into this contract with the Purchaser in reliance upon the Proposal;
- (b) it must not construct or allow to be constructed or remain on the Land or any part of it any building, structure or improvement which does not comply with the Proposal or the Planning Permit; and
- (c) the Purchaser's obligations under this Special Condition 20.1 will survive termination of this contract and continue indefinitely.

21. Dispute Resolution

21.1 Dispute Notice

If under this contract of sale any dispute or difference is to be referred for determination under this special condition, then either party may give to the other a Dispute Notice adequately identifying the matters the subject of that dispute or difference.

21.2 Committee

- (a) The Vendor and the Purchaser must establish a committee to initially consider any disputes referred to determination under this contract of sale.
- (b) Each party must nominate a representative to the committee within 10 Business Days of the Day of Sale.

21.3 Time for resolution

If the dispute or difference is not resolved by the committee established under special condition 21.2 within 5 Business Days of the receipt of the Dispute Notice or such further time as the Parties agree, then the dispute or difference shall be submitted for resolution in accordance with the provisions of this special condition.

21.4 Appointment of chief executive officers to determine dispute

A dispute or difference arising referred for determination under this special condition which is not resolved by the committee under special condition 21.1 shall be referred to the parties chief executive officers or their delegates for resolution.

21.5 No action before attempted resolution

Neither party may commence or maintain any action in relation to any dispute until it has been referred and determined in accordance with this special condition except for injunctive or declaratory relief.

22. FIRB Approval

22.1 Warranty by Purchaser

The Purchaser warrants to the Vendor that:

- (a) the Purchaser has not breached the *Foreign Acquisitions and Takeovers Act 1975* (Cth) in entering into this contract; or
- (b) the Purchaser has obtained:
 - (i) any authority of the Reserve Bank of Australia required under the *Banking (Foreign Exchange) Regulations 1959* (Cth); and
 - (ii) any other approval required from any Authority under any other Law, to enter into this contract.

22.2 Consequences of breach

If any of the warranties in Special Condition 22.1 is untrue in any way, the Purchaser will:

- (a) be in default under this contract; and
- (b) (without limiting Special Condition 19) indemnify the Vendor against all loss (including consequential loss) suffered by the Vendor as a result of the Vendor having relied on the warranty.

23. Non resident CGT withholding

- (a) Subject to Special Condition 23(b), the Purchaser will provide to the Vendor written notice of its intention to withhold from a payment due under this contract or remit an amount to the Commissioner of Taxation under subdivision 14–D of Schedule 1 of the TAA53 at least 14 days prior to the day on which the Purchaser pays the amount to the Commissioner of Taxation under subdivision 14–D of Schedule 1 of the TAA53.
- (b) The requirement in Special Condition 23(a) does not apply to the Purchaser if:
 - (i) the day on which the Purchaser intends to withhold and remit an amount to the Commissioner of Taxation under subdivision 14–D of Schedule 1 of the TAA53 is the day the Purchaser becomes the owner of the Land; or
 - (ii) the Vendor provides the Purchaser a valid certificate issued under subsection 14–220(1) of Schedule 1 of the TAA53 covering the time the transaction is entered into.

24. Special Land tax

- (a) The Purchaser acknowledges that the Property is exempt from land tax under the Land Tax Act.
- (b) The Purchaser:
 - (i) agrees that if, as a result of:
 - (A) any action by or on behalf of the Purchaser; or
 - (B) the Purchaser's ownership of the Property,the Property ceases to be exempt under section 80 of the Land Tax Act, the Purchaser, despite the provisions of section 31(1) of the Land Tax Act, shall be

- responsible for payment of any special land tax pursuant to section 30 of the Land Tax Act; and
- (ii) indemnifies the Vendor and keeps the Vendor indemnified from and against the payment of any special land tax which becomes payable as a result of any action by or on behalf of the Purchaser or the Purchaser's ownership of the Property which causes the Property to cease to be exempt from land tax.
- (c) For the avoidance of doubt, this special condition does not merge on settlement.

25. Electronic Conveyancing

- (a) Each party must:
 - (i) be, or engage a representative who is, a Subscriber for the purposes of the *Electronic Conveyancing National Law*;
 - (ii) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the *Electronic Conveyancing National Law*; and
 - (iii) conduct the transaction in accordance with the *Electronic Conveyancing National Law*.
- (b) The Vendor must open the Electronic Workspace (workspace) as soon as reasonably practicable. The inclusion of a specific date for settlement in a workspace is not of itself a promise to settle on that date. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- (c) The Vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.
- (d) Settlement occurs when the workspace records that:
 - (i) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or
 - (ii) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- (e) The parties must do everything reasonably necessary to effect settlement:
 - (i) electronically on the next business day; or
 - (ii) at the option of either party, otherwise than electronically as soon as possible, if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 25(d) has not occurred by 4.00pm, or 6.00pm if the nominated time for settlement is after 4.00pm.
- (f) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's authorised deposit-taking institution has not done something in the electronic workspace.
- (g) If settlement fails and cannot occur by 6.00pm on the Due Date because a computer system operated by Land Use Victoria, State Revenue Office, Reserve Bank, an authorised deposit-taking institution or the Electronic Lodgement Network Operator is inoperative, neither party is in default and the Due Date is deemed to be the next Business Day. Time remains of the essence.
- (h) Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.
- (i) The Vendor must before settlement:
 - (i) deliver any keys, security devices and codes (**keys**) to the estate agent named in the contract;

- (ii) direct the estate agent to give the keys to the Purchaser or the Purchaser's nominee on notification of settlement by the Vendor, the Vendor's Subscriber or the Electronic Network Operator;
 - (iii) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no Vendor's subscriber, confirm in writing to the purchaser that the Vendor holds those documents, items and keys at the Vendor's address set out in the contract; and
 - (iv) give or direct the Vendor's Subscriber to give all those documents and items, and any such keys, to the Purchaser or the Purchaser's nominee on notification of settlement by the Electronic Network Operator.
- (j) The Vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the Vendor in accordance with General Condition 6.
- (k) In this Special Condition:
- (i) **Electronic Conveyancing National Law** means the provisions of the Electronic Conveyancing National Law as in force from time to time set out in the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW) applying in Victoria because of section 4 of the *Electronic Conveyancing (Adoption of National Law) Act 2013* (Vic); and
 - (ii) **Subscriber** has the meaning given to that term in the Electronic Conveyancing National Law.

26. Digital Duties Form

26.1 Definitions and interpretation

In this Special Condition 26:

- (a) **Complex transaction** means a transaction that is determined to be a complex transaction by the SRO for the purposes of land transfer duty assessment;
- (b) **Duties Form** means the online form called "Digital Duties Form" generated from the SRO website;
- (c) **Non-complex transaction** means a transaction that is not a Complex transaction;
- (d) **Purchaser Duties Form** has the meaning given under Special Condition 26.4(b)
- (e) **SRO** means the State Revenue Office of Victoria;
- (f) **SRO duty determination** is the determination of duty by the SRO for a Complex transaction; and
- (g) **Vendor Duties Form** has the meaning given under Special Condition 26.3(a)[RS1].

26.2 Application

This Special Condition 26 only applies if settlement is conducted electronically in accordance with the Electronic Conveyancing National Law.

26.3 Vendor's obligations

The Vendor must:

- (a) complete, or procure the Vendor's Legal Practitioner to complete, those parts of the Duties Form which are to be completed by the Vendor in respect of the sale of the Property under this Contract (**Vendor Duties Form**);
- (b) invite, or procure the Vendor's Legal Practitioner to invite, the Purchaser's Legal Practitioner (or if none then the Purchaser) to complete the Purchaser Duties Form on the earlier of:

- (i) at least 5 Business Days prior to the Due Date in the case of a Non-complex transaction; or
- (ii) if the Purchaser gives notice to the Vendor of a Complex transaction under Special Condition 26.4(a), at least 40 days prior to the Due Date; and
- (c) if the Purchaser has complied with Special Condition 26.4(b), sign or approve the Duties Form within 2 Business Days of the Purchaser signing or approving the Purchaser Duties Form, unless there is manifest error in which case the Vendor must notify the Purchaser of the error and request the Purchaser to amend it.

26.4 Purchaser's obligations

The Purchaser must:

- (a) notify the Vendor whether this transaction will be a Complex transaction on the Day of Sale;
- (b) complete, or procure the Purchaser's Legal Practitioner to complete, those parts of the Duties Form which are to be completed by the Purchaser (**Purchaser Duties Form**) at least:
 - (i) 2 Business Days prior to the Due Date in the case of a Non-complex transaction; and
 - (ii) 35 days prior to the Due Date in the case of a Complex transaction;
- (c) sign or approve the Duties Form at least:
 - (i) 2 Business Days prior to the Due Date in the case of a Non-complex transaction; and
 - (ii) 33 days prior to the Due Date in the case of a Complex transaction unless there is manifest error in which case the Purchaser must promptly notify the Vendor of the error and request the Vendor to amend it;
- (d) in the case of a Complex transaction, submit the Purchaser's lodgement for SRO duty determination (which includes the signed Duties Form) at least 32 days prior to the Due Date; and
- (e) if requested by the Vendor under Special Condition 26.3(c), make any changes to the Duties Form requested by the Vendor or the Vendor's Legal Practitioner and sign or approve (or re-sign or re-approve) the amended Duties Form within 1 Business Day of being requested to do so.

26.5 Breach

- (a) Without limiting any of the Vendor's other rights, the Purchaser acknowledges and agrees that, if the Purchaser fails to comply with Special Condition 26.4:
 - (i) settlement may be delayed, and
 - (ii) if settlement is delayed, the Purchaser will be in breach of this Contract (to the extent of the Purchaser's non-compliance).
- (b) The Vendor acknowledges and agrees that unless and until the Vendor complies with Special Condition 26.3, to the extent that settlement is delayed, the Vendor is not entitled to default payments or to serve a notice under General Condition 27 in respect of a delay to settlement.

27. Section 173 Agreement

27.1 Acknowledgement

The Purchaser acknowledges that:

- (a) Section 173 Agreement means agreement AE205222J made pursuant to section 173 of the *Planning and Environment Act 1987* (Vic);
- (b) Section 173 Agreement is registered on the Land;

- (c) it has read and understood the Section 173 Agreement and Council Letter; and
- (d) the Vendor makes no representation and gives no warranty regarding the Section 173 Agreement.

27.2 Vendor obligations

The Vendor will request from Council the removal of the Section 173 Agreement.

27.3 No compensation

The Purchaser is not entitled to exercise any Purchaser Rights where the Vendor has complied with its obligations in special condition 27.2.

28. Section 32 Statement (Electronic)

- (a) The Purchaser acknowledges and agrees that the Vendor has complied with all its obligations under section 32 of the *Sale of Land Act 1962* (Vic) by providing the section 32 statement to the purchaser by electronic means and the purchaser acknowledges receipt of the section 32 statement.
- (b) The purchaser acknowledges and agrees it is in substantially as good a position as if the section 32 statement were in paper rather than electronic format.

29. Purchaser as trustee

If the Purchaser has entered into this contract in the capacity as trustee of a trust (whether or not the Landlord has any notice of the terms of the trust), the Purchaser, in its personal capacity:

- (a) agrees that it:
 - (i) is personally liable for the performance of the Purchaser's obligations under this contract;
 - (ii) has taken all procedures necessary to ensure the trust's assets are available to compensate the Vendor for any default by the Purchaser;
 - (iii) will exercise, and assign to the Vendor on demand, any right of indemnity the Purchaser has against the trust's assets to the extent of the liability of the Purchaser under this contract; and
- (b) warrants that it:
 - (i) has full power and authority under the terms of the trust to enter into and perform the Purchaser's obligations under this contract, and that entry into this contract by the Purchaser is in the due administration of the trust;
 - (ii) is the only trustee of the trust;
 - (iii) at the time of entering this contract, is not in breach of any of its obligations under the terms of the trust deed constituting the trust; and
 - (iv) has the unrestricted right to be indemnified against the assets of the trust, will not create or permit to exist any restriction on that right of indemnity, and that the right of indemnity has priority over the rights of the beneficiaries of the trust assets.

30. Counterparts

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.

Schedule 1 - Proposal

[Purchaser's Proposal to be inserted]

Schedule 2 – Council Letter

File: FOL/17/362

13 September 2019

Mr Robert Stopajnik
Development Victoria
Level 9, 8 Exhibition Street
MELBOURNE VIC 3000

Dear Robert

VALLEY LAKE SINGLE DWELLING COVENANTS AND SITE OFFICE DEVELOPMENT

Thank you for continuing to liaise with Council in relation to the finalisation of the Valley Lake Estate development.

In response to your queries regarding 45 Valley Lake, Boulevard (former Sales Office), Council acknowledges the land was shown as a Commercial site on the Master Plan. Council concedes obligations 6.1(a) to (c) of the Section 173 Agreement (AE205222J) are only applicable to land shown as Residential Lots as defined by the agreement. Therefore, once a covenant addressing Part 6.1 (d) has been registered on title then it is confirmed the obligations of the agreement have been met in respect to the Sales Office site.

The Sales Office site is located in a General Residential Zone and any use and development of the land must comply with the provisions of the Moonee Valley Planning Scheme and is bound by its allocation in the Master Plan. Any application would also be subject to public notification pursuant to the *Planning and Environment Act 1987* and third party appeal rights. Some allowable uses under the General Residential Zone are:

- Medical centre;
- Restricted recreation facility/boutique gymnasium;
- Food and drink premises (other than Convenience restaurant and take away food premises);
- Residential, including multi dwellings;
- Open space in the form of parkland.

Any use and development proposed must be site responsive and address site opportunities and constraints provided as result of its location, including the provision and location of car parking spaces.

Moonee Valley City Council

9 Kellaway Avenue Moonee Ponds | PO Box 126 Moonee Ponds Victoria Australia 3039 | DX 212139
Phone 03 9243 8888 Fax 03 9377 2100 Email council@mvcc.vic.gov.au

mvcc.vic.gov.au

ABN 54 651 216 324

Council will engage in further discussions regarding future proposals, by way of a pre-application meeting, in order to ensure the best possible outcome for the site, community and Council. This advice does not constitute a guarantee a permit would be granted for the abovementioned uses. As discussed on the phone, there is concern regarding the commercial viability of a café use, and the negative amenity impacts arising from a vacant building should a venture fail; we encourage endeavours to make any commercial premises 'multi-purpose'.

In light of the fact that Development Victoria is not keen to pursue the matter of applying Single Dwelling Covenants to properties subject to Section 173 Agreement AE205222J, Council has evaluated the risk and consider the likelihood of further subdivision is low given the site coverage of affected properties. If required, Council will address the applications on a case by case basis, however will take the opportunity through the development of the Keilor East Neighbourhood Plan to embed more appropriate planning controls in the Planning Scheme to achieve the effect sought through the Agreement.

For further information or discussion, please contact Petrus Barry, Manager Statutory Planning on 9243 1280.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'N' followed by a long horizontal line that ends in a large, loopy circle.

Natalie Reiter
Director Planning and Development



Annexure A – Guarantee and indemnity

Annexure to contract of sale

Lot A, 45 Valley Lake Boulevard, Keilor East, Victoria

—

By [***name of guarantor (including ABN/ARBN/ACN if applicable)***] (Guarantor)

To Development Victoria ABN 61 868 774 623
(Vendor)

—

Details

Date

Guarantee and indemnity

by:

Name [name of guarantor (including ABN/ARBN/ACN if applicable)]
Short form name Guarantor
Notice details [address of guarantor]
Facsimile: [facsimile]
Attention: [to be inserted]

to: Development Victoria ABN 61 868 774 623

Agreed terms

Defined terms & interpretation

1.1 Defined terms

In this guarantee and indemnity:

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne or at the location of the Property.

Contract means the contract to be entered into between the Vendor and the Purchaser for the sale and purchase of the property known as Lot A, 45 Valley Lake Boulevard, Keilor East, Victoria 3033.

Guaranteed Money means all money that the Purchaser is or may at any time be liable (actually, prospectively or contingently) to pay to the Vendor under or in connection with the Contract (including in connection with non-compliance with the Purchaser's obligations under the Contract) and includes money which the Purchaser would be liable to pay but for its insolvency.

Guarantor Assets means all debts and liabilities owed by the Purchaser to the Guarantor and any security the Guarantor holds over the Purchaser's assets.

Purchaser means the person described as the Purchaser in the Contract.

1.2 Interpretation

In this guarantee and indemnity:

- (a) the singular includes the plural and the other way round;
- (b) a reference to:
 - (i) this guarantee and indemnity includes its schedules and annexures;
 - (ii) this guarantee and indemnity or another document includes a reference to it as novated, altered or replaced;
 - (iii) anything is to the whole and each part of it;

- (iv) a group of persons is all of them or any two or more of them jointly and each of them severally;
- (v) a person includes the person's executors, administrators, successors and permitted assigns;
- (vi) legislation includes any amendment to it and any consolidation, re-enactment or replacements of it and any subordinate legislation made under it; and
- (vii) **Guarantor** is to all persons named as **Guarantor** jointly and each of them severally;
- (c) words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (d) a promise, representation or warranty:
 - (i) in favour of two or more persons is in favour of all of them jointly and each of them severally; and
 - (ii) made by two or more persons binds all of them jointly and each of them severally.

2. Consideration

The Guarantor gives this guarantee and indemnity in consideration of the Vendor agreeing to enter into the Contract at the Guarantor's request.

3. Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Vendor that the Purchaser will:

- (a) pay the Guaranteed Money on time; and
- (b) comply on time with the Purchaser's obligations under the Contract.

4. Payment under guarantee

If the Purchaser does not:

- (a) pay the Guaranteed Money; or
- (b) comply with the Purchaser's obligations under the Contract,

on time, the Guarantor must on demand pay that money to the Vendor or comply with those obligations or both, as the case may be, whether or not the Vendor has demanded that the Purchaser pay or comply.

5. Indemnity

As an additional obligation of the Guarantor which the Vendor may enforce separately from the guarantee in clause 3, the Guarantor irrevocably and unconditionally indemnifies the Vendor against, and undertakes as principal debtor to pay the Vendor on demand a sum equal to all liability, loss, penalties, costs, charges and expenses directly or indirectly arising from or incurred in connection with:

- (a) the Purchaser not paying the Guaranteed Money on time;
- (b) the Purchaser not complying on time with the Purchaser's obligations under the Contract; and
- (c) the Vendor not being able to recover all of the Guaranteed Money from the Purchaser or enforce all of the Purchaser's obligations under the Contract for any reason,

whether or not the Vendor or the Guarantor knew or should have known about a fact or circumstance that gives rise to a Claim under this indemnity. It is not necessary for the Vendor to incur expense or make a payment before enforcing this indemnity.

6. Extent of guarantee and indemnity

This guarantee and this indemnity are independent of and in addition to any other guarantee or security the Vendor holds and are continuing and are not discharged by any one payment and may not be terminated by the Guarantor. They continue until the Vendor unconditionally releases the Guarantor in writing or until all of the Guarantor's obligations under the guarantee and the indemnity are complied with.

7. Liabilities and rights not affected

The Guarantor's liabilities as a guarantor, indemnifier and principal debtor, and the Vendor's rights, under this guarantee and indemnity are not affected by anything which might otherwise affect them including but not limited to:

- (a) the Vendor giving time or any other concession to the Purchaser, the Guarantor or any other person;
- (b) the Vendor abandoning or transferring any right, compromising with or releasing the Purchaser or any person named as Guarantor;
- (c) the Vendor's acquiescence, delay or mistake;
- (d) the variation, assignment, or termination of the Contract;
- (e) a liquidator or a trustee in bankruptcy disclaiming the Contract;
- (f) the Purchaser, if a corporation, being wound up or dissolved;
- (g) the Purchaser, if an individual, being declared bankrupt or dying;
- (h) the Vendor obtaining judgment against the Purchaser or any person named as Guarantor for money secured under this guarantee and indemnity;
- (i) the obligations of a person named as Guarantor being partly or wholly unenforceable for any reason;
- (j) any person named as Guarantor not executing this guarantee and indemnity or not executing it correctly; and
- (k) the Guarantor being wholly or partly released from its obligations for any other reason.

8. Guarantor's rights waived

So far as it legally can, the Guarantor waives:

- (a) any right it has of requiring the Vendor to proceed against or enforce any right against the Purchaser or any other person before claiming against the Guarantor under this guarantee and indemnity;
- (b) any Claim, right of set off or counterclaim or any defence which might reduce or discharge the Guarantor's liability under this guarantee and indemnity; and
- (c) any legal or equitable rights it has that are inconsistent with its obligations under this guarantee and indemnity.

9. Guarantor's rights suspended

Until the Vendor:

- (a) has received all the Guaranteed Money;
- (b) is satisfied that it will not have to repay any of it; and
- (c) is satisfied that all the Purchaser's obligations under the Contract have been complied with,

the Guarantor must not:

- (d) claim for any reason to have a right to the benefit of any guarantee or other security the Vendor holds in connection with the Contract;
- (e) make a Claim or enforce a right against the Purchaser or its property; or
- (f) prove or claim or exercise voting rights if a liquidator, provisional liquidator, administrator or trustee in bankruptcy is appointed in respect of the Purchaser.

10. Reinstatement of guarantee

If any payment or other transaction in connection with the Contract or this guarantee and indemnity is void, voidable, unenforceable or defective or is claimed to be so and that claim is upheld or settled then:

- (a) the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and
- (b) immediately the Vendor requests it, the Guarantor must do everything necessary to put the Vendor back into the position it would have been if the payment or other transaction had not been made.

11. Power of attorney

The Guarantor for valuable consideration irrevocably appoints the Vendor its attorney to:

- (a) demand, sue for, recover and enforce the Guarantor Assets;
- (b) prove on behalf of the Guarantor for the Guarantor Assets if the Purchaser is insolvent, liquidated or has an administrator appointed to it; and
- (c) exercise the Guarantor's rights in connection with and deal with the Guarantor Assets in the Guarantor's name as if the Vendor were the Guarantor.

The Vendor may delegate its powers under this clause 11 and revoke a delegation. The Guarantor must ratify everything the Vendor or its delegate does under this clause 11.

12. Costs

The Guarantor must pay the Vendor on demand for:

- (a) the Vendor's costs, charges and expenses (including but not limited to legal costs, charges and expenses on a full indemnity basis whether incurred by or awarded against the Vendor) in connection with this guarantee and indemnity including but not limited to its enforcement; and
- (b) all taxes, duties, imposts and charges in connection with this guarantee and indemnity or any transaction contemplated by it.

13. Interest

The Guarantor must pay interest on any amount payable by it under this guarantee and indemnity, which it does not pay on time on demand or at times the Vendor specifies, from when the amount becomes due until it is paid. Interest is calculated on daily balances at the rate that is 2% above the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic) and is capitalised on the last day of each month if unpaid.

14. Vendor's certificate

A certificate from the Vendor stating that an amount is owing or an event has occurred is taken to be correct unless the contrary is proved.

15. Notices

A notice, consent, approval, request, demand or legal process in connection with this guarantee and indemnity:

- (a) must be in writing and in English;
- (b) must be signed by the party giving it or that party's authorised officer, attorney, or legal practitioner;
- (c) must be left at or posted by prepaid post to the address for notices of the addressee, or sent to the addressee's facsimile number, or email address specified in the Details, or if the addressee notifies another address, facsimile number or email address for receipt of documents, then at or to that address, facsimile number or email address;
- (d) without limiting clause 15(c), may be served in a manner authorised by law or the Supreme Court of Victoria for serving of documents;
- (e) is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if posted by express post on the next Business Day after posting;
 - (iii) if posted by priority post on the fourth Business Day after posting;
 - (iv) if posted by regular post on the seventh day after posting;
 - (v) if sent by email on the first to occur of:
 - (A) receipt by the sender of an email acknowledgement from the recipient's email system showing that the notice has been delivered to an email address stated in the details;
 - (B) the time that the notice enters an information system which is under the control of the recipient; and
 - (C) the time that the notice is first opened or read by the intended addressee;however if the sender receives an out of office reply that states the recipient is out of the office until a later date, the notice will only be taken to be served on that later date;
 - (vi) if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee;

but if the result is that a notice would be taken to be served on a day that is not a business day in the place to which the notice is sent or later than 4.00pm (local time of the recipient) at the place to which the notice is sent it will be taken to have been duly served at 9.00am on the next business day at such place.

16. Governing law, jurisdiction and service

16.1 Law

The guarantee and indemnity is governed by the law applicable in Victoria.

16.2 Jurisdiction

The Guarantor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

16.3 Service

Any document in connection with legal proceedings may be served on a party by delivering it to or leaving it for that party at that party's address for service specified in the Details (or if the Vendor or Guarantor notifies another address for service, then to or at that address) as well as by any other method of service permitted by law.

17. GST

17.1 Interpretation

In this clause 17:

- (a) **GST, Supply and Tax Invoice** have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (b) a reference to payment being made or received includes a reference to consideration other than money being given or received.

17.2 Guarantor to pay

The Guarantor must pay to the Vendor with any payment it makes to the Vendor under this deed an additional amount equal to any GST payable by the Vendor on the supply for which that payment is made.

18. Counterparts

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.

EXECUTED as a deed.

[Guarantor execution clause to be amended as required]

Signed sealed and delivered by [guarantor name to be inserted] in the presence of

Signature of witness

Signature of [name to be inserted]

Name of witness (print)

Signed sealed and delivered by [Name of guarantor company] in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)