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“Deepwater Estate”

211 Kluver Street, Bald Hills

CONTRACT

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* *January 2017*
Eleventh Edition REIQ House and Land Contract
Post-Registration Lot

ANNEXURE “A”

SPECIAL CONDITIONS

“Deepwater Estate”

211 Kluver Street, Bald Hills

Contracting Parties

- Seller:** East Coast Gravel Pty Ltd ACN 009 931 239
- Buyer:** The party named as Buyer in the Reference Schedule of the address shown in the Reference Schedule
- Lot:** The lot identified in the Reference Schedule
-

1. Terms of Contract

- 1.1 The Seller and Buyer acknowledge that they have each received and read the REIQ Terms of Contract For Houses and Residential Land (11th Edition) ("Terms of Contract") forming part of this Contract.
- 1.2 If there is any conflict between these Special Conditions and the Terms of Contract of Contract then these Special Conditions shall prevail.

2. Definitions

In these Special Conditions:-

Approval means any approval of a federal, state or local government or any authority relating to the Estate, the Lot or the Contract or which otherwise affects the Seller's ability to settle the Contract..

Bank Guarantee means a bank guarantee, unconditional undertaking to pay or a bank deposit bond, approved in writing by the Seller, that is:

- (a) in favour of the Deposit Holder;
- (b) from a bank or other financial institution acceptable to the Seller;
- (c) in a form acceptable to the Seller;
- (d) for an amount equal to the Deposit; and
- (e) to be held by the Deposit Holder.

Council means the Brisbane City Council.

Department means the Department of Natural Resources and Mines.

Design Guidelines and Building Covenants means the guidelines and covenants detailed in the "Design Guidelines and Building Covenants" attached to Annexure "B" of this Contract and provided to the Buyer prior to this Contract being signed by the Buyer.

Development Works means demolition work, construction work, landscaping, excavation, filling, installations and ancillary work associated with the Estate in accordance with any development approval or consent from the Council or state authority including but not limited to the construction of any road or public walkway, bikeway, park or other facilities.

Estate means the residential estate which may include single dwelling and duplex residential lots and parkland (and may be completed in stages) described in the heading of this Contract and called "Deepwater Estate" of which the Lot will form part together with any adjoining land (if any) owned or being acquired by the Seller or a related corporation.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Lot means the lot or lots described in the Reference Schedule of the Contract.

Personal Guarantee means, a guarantee and indemnity in the form required by the Seller and as contained in these Special Conditions from each of the Guarantor(s) being, unless otherwise agreed by the Seller:

- (a) if the Buyer is a company – each director; or
- (b) if the Buyer is a trustee each beneficiary.

Resale Deed means a deed in favour of the Seller in the form set out in Annexure "C".

Services means water, sewerage, gas, electricity or other services, and includes any means for access to those services (such as manholes).

Special Condition is SC.

3. Interpretation

- 3.1 In these special conditions unless the contrary intention appears expressions or words used in the Contract shall have the same meaning.

4. Identification of Lot

- 4.1 The Lot sold under this Contract is the Lot described in the Reference Schedule.
- 4.2 The Lot is sold subject to any easements and covenants contained in the Reference Schedule or as otherwise required by Council including without limitation in respect of utility services (such as water, sewerage, electricity or telephone) or noise attenuation. The Buyer acknowledges that the Lot may be subject to a noise covenant which may be registered on the title of the Lot at Settlement and may be subject to other noise attenuation requirements as may be required by the Council or other statutory authority.
- 4.3 The Buyer is not entitled to claim any compensation, damages or reduction of the Purchase Price, or to terminate this Contract as a result of:
- (a) the Lot being subject to any easement for Services or any other right given to or to be given to the Council or other statutory authority in respect of Services; and/or
 - (b) any requirements imposed by the Council or other statutory authorities in connection with the Approval including without limitation any noise covenant registered on the title of the Lot or any other requirements in connection with noise attenuation.

- 4.4
- (a) The Seller does not warrant that any Services will be connected to the Lot or to the boundary of the Lot at Settlement.
 - (b) Connection of any Services to the Lot will be the Buyer's responsibility after the Buyer applies for and receives any required approvals from the relevant authorities and service providers.
 - (c) The street in front of the Lot will be bitumen sealed with concrete kerbing and channeling.

4.5 The Buyer acknowledges that before entering into this Contract the Buyer received and satisfied itself regarding the terms and conditions of the decision notice of the Council containing the development approval in respect of the Estate that will contain the Lot and otherwise satisfied itself regarding the terms and conditions of all approvals which relate to the Lot and to the Estate.

5. Deposit

5.1 The Deposit Holder may (but is not obliged to) invest the Deposit when fully paid in an interest bearing bank account in its name as trustee for the Buyer and the Seller until the Settlement Date.

5.2 If completion of the Contract occurs, any interest earned on the Deposit will be shared equally between the Buyer and the Seller.

5.3 If completion of the Contract does not occur, the interest earned on the Deposit will be paid to:

- (a) the Seller - if completion did not occur due to a breach of the Contract by the Buyer; or
- (b) the Buyer - if it was for any other reason.

5.4 The Deposit and the interest are at the risk of whoever is ultimately entitled to those amounts.

5.5 The Deposit Holder is not liable to a party by reason of delay in investing the Deposit and the Deposit Holder may terminate the investment of the Deposit a reasonable time before the Settlement Date so the Deposit and interest will be available at the Settlement Date.

5.6 The Seller and Buyer equally indemnify the Deposit Holder against the costs of preparation and lodgment of any tax return required in respect of investment of the Deposit and tax (if any) payable and authorise the Deposit Holder to deduct such costs and tax from the interest accrued on the Deposit.

5.7 The Buyer must give the Deposit Holder its tax file number within five (5) Business Days after the Contract Date. If the Buyer does not give its tax file number to the Deposit Holder then it accepts that the interest earned on the Deposit may be taxed at the highest rate allowable.

5.8 The Buyer and the Seller equally indemnify the Deposit Holder against any tax payable on interest earned on the Deposit.

5.9 The Deposit Holder does not have to account to the Buyer or the Seller for interest for distribution until the investment of the Deposit matures and bank debits tax and any other charges or expenses are deducted from the interest.

6. Guarantee in Lieu of Deposit

6.1 The Deposit Holder may (but is not obligated to) accept in payment of the Deposit a Bank Guarantee acceptable to the Seller (in its absolute discretion), and in the event that it is acceptable to the Seller, the Buyer will have satisfied its obligations to pay the Deposit under this Contract if the Buyer provides to the Deposit Holder, no later than the Finance Date, a Bank Guarantee for the amount of the Deposit.

6.2 In the event that a Bank Guarantee is used in lieu of the Deposit, the Buyer must not take any action or cause any other person to take any action to cause the Bank Guarantee to be withdrawn, revoked, cancelled or limited in any way. If the Bank Guarantee has an expiry or termination date before the Settlement Date the Buyer must replace the Bank Guarantee at least 30 days before the expiry or termination date.

6.3 The Seller may demand payment of the amount secured by any Bank Guarantee at any time the Buyer is in default of its obligations under this Contract without reference to the Buyer or any other person. If such a demand is made, the amount paid under any Bank Guarantee must be paid to the Deposit Holder and it will then be treated as the Deposit.

6.4 If the Buyer does not deliver a Bank Guarantee in accordance with this SC then the Seller may, in addition to any other remedies available to it under this Contract, recover the unpaid Deposit as a liquidated debt. If the Seller has not terminated this Contract, then the Deposit must be paid to the Deposit Holder.

7. Intentionally Deleted

8. Warranties and Acknowledgments by Buyer

8.1 The Buyer acknowledges that:

- (a) the provisions of this Contract contain the entire agreement between the parties;
- (b) without limitation it does not rely upon any plans, brochure or other advertising material, statement, representation, warranty, condition or promise made or given by or on behalf of the Seller except as set out in this Contract and the Buyer has signed this Contract after making its own investigations and enquiries and satisfying itself in that regard;
- (c) any advertising material previously disclosed and not attached to this contract is not relied upon in this purchase;
- (d) the sale of the Lot may be part of a staged development of the Estate and that:
 - (i) the Estate may occur in a number of stages;
 - (ii) the Estate may alter from that proposed at the date of this Contract;
 - (iii) the Seller may elect to, or be required to close parts of the roads in the Estate;
 - (iv) the Seller may elect not to proceed with a further stage of the Estate (except as required under this Contract);
 - (v) the location of Services to or under the Lot may not be known at the Contract Date and the Buyer is not entitled to terminate this Contract or make any claim or seek damages for compensation as a result of the location of any Services; and
 - (vi) the Buyer cannot object to any application to amend the Estate or further applications by the Seller or associated entities.

8.2 The Buyer warrants that:

- (a) the Buyer is relying entirely upon the Buyer's own enquiries relating to the Lot;
- (b) the Buyer has obtained independent legal advice (or has had the opportunity to obtain that advice but declined to do so) in respect of this Contract and is satisfied about the Buyer's rights and obligations under the terms of this Contract; and
- (c) the Buyer has obtained independent expert advice (or has had the opportunity to obtain that advice but declined to do so) in respect of the Lot and is satisfied about the nature of the Lot and the purposes for which the Lot may lawfully be used.

8.3 Without limiting the generality of SC 8.2, the Buyer warrants that neither the Seller nor anyone on behalf of the Seller has made any representation or warranty upon which the Buyer relies as to the value of or the financial return to be derived from the Lot.

9. Future Marketing of the Estate

9.1 The Buyer will not object (and waives any right to do so) to methods employed by the Seller in endeavoring to sell other lots forming part of the Estate including, without limitation, the use of signs, the placement of signs on footpaths or other lots and the maintenance of display products/sales office PROVIDED that the Seller does not cause unreasonable interference to the comfort and convenience of the Buyer's use of the Lot after the Settlement Date.

10. Staging of Development

10.1 The Buyer acknowledges:

- (a) that the Seller may systematically develop and subdivide the Estate in one or more stages;
- (b) the Development might not be sequential from the nearest point of access from a relevant part of a public road (for example, part of the Estate furthest from a public road might be developed before a part nearest a public road);
- (c) the Seller may at any time seek and obtain an approval from the relevant authority to remove from the Estate certain land or include into the Estate certain additional land; and
- (d) there may be interruptions of Services and vehicular access by the Seller or their contractors and the Buyer acknowledges that neither they nor any other person who is the occupier of the Lot will object to the interruptions.

10.2 The Buyer must not:

- (a) do anything which could;
- (b) omit to do anything if the omission could

prevent or delay the grant, or affect the conditions, of any Approvals or permits relevant to the Development or subdivision of the Estate or the inclusion or exclusion of any land into or from the Estate or delay sale of lots in the Estate or any future development of associated estates by the Seller or associated entities.

10.3 The Buyer also acknowledges that in the course of development of the Estate by work that includes, but is not limited to, clearing of vegetation, undertaking of earth works for installation of Services and other construction work, construction of roadways, driveways, residential and other buildings, and landscaping, the Buyer or other occupiers of the Lot will suffer nuisance and/or disturbance by virtue of but not necessarily limited to:

- (a) dust;
- (b) noise and/or vibration (from, amongst other things, passage across the Estate of construction vehicles, and use of power tools and other plant and equipment; and
- (c) traffic disturbance resulting from the passage and re-passage of construction vehicles.

10.4 The Buyer:

- (a) must not object to any nuisance (whether to the Seller, the local authority or any other body or authority);
- (b) must ensure that any other person who is the occupier of the Lot at a relevant time does not object to any nuisance referred to in SC 10.3; and

- (c) indemnifies the Seller against any demand, claim or proceeding made or instituted against loss or damage suffered and costs and expenses incurred by the Seller as a result, directly or indirectly, of breach by the Buyer of any obligation of the Buyer, positive or negative, under this SC .

10.5 The Buyer may not make any objection, requisition or claim for compensation as a result of:

- (a) any future stages of the Estate not proceeding;
- (b) the time at which the development of any future stages of the Estate is carried out;
- (c) the granting or taking of any easements or covenants; or
- (d) the registration of any other document necessary to give effect to any of the future stages of the Estate.

10.6 The Buyer agrees that it will not be materially prejudiced or entitled to object or claim compensation by reason of any changes in the Seller's intention in respect of the future stages of the Estate.

10.7 The Seller will until it has completed all stages of the Estate be entitled to:

- (a) lay, re-lay and/or construct upon any adjoining land owned by the Seller such pipes, channels, conduits, manholes, manhole chambers, inlets, equipment and fittings as are necessary or desirable to make provision for services to any stages of the Estate;
- (b) continue to effect Development Works upon any adjoining land owned by the Seller to achieve completion of the Development Works without interference or interruption or claim for compensation, damage or otherwise from the Buyer; and
- (c) effect the Development Works in such a manner as will so far as is practicable in all the circumstances minimise interference with the Buyer's use and enjoyment of the Lot.

11. No Caveat and Seller's Right to Mortgage

11.1 The Buyer must not lodge or permit to be lodged any caveat affecting the Lot or the Estate.

11.2 The Buyer acknowledges that in the course of development of the Estate, the Seller or an associated corporation may need to borrow money and that Section 73 of the *Property Law Act 1974* provides that in certain circumstances this Contract is voidable by the Buyer if the subject land or Lot is mortgaged without the Buyer's consent.

11.3 The Buyer consents to the Seller at any time after the date of this Contract giving a mortgage or charge over all or any part of the Estate including the Lot to secure any new borrowing by the Seller, as collateral security for any purpose of the Seller or any associated corporation, or a security for any further advance to the Seller or an associated corporation and to the Seller permitting any existing mortgage or charge to become collateral security for any obligation (present or future) of the Seller or any associated corporation.

12. Construction of Residence

12.1 The Buyer must, at its cost in all respects:

- (a) if and to the extent the approval of the Council is required to the construction of the Residence or any other improvements, make application to the Council for such approval within 12 months after the Settlement Date;
- (b) within 12 months of commencement of construction and in any event within 24 months of the Settlement Date, complete the construction of the Residence in accordance in all respects with all approvals so obtained and in accordance with the requirements of the Design Guidelines and Building Covenants.

13. Resale Deed

- 13.1 The Buyer cannot dispose of the Lot or any share or interest in the Lot (by transfer or otherwise) without first obtaining at its cost from the proposed disponee/transferee and delivering to the Seller a Resale Deed by which that transferee covenants to be bound by and comply with the provisions of the Design Guidelines and Covenants as if he were a party to this Contract as buyer instead of the Buyer and including a covenant in terms of this present SC 13.1.
- 13.2 If the Buyer fails to satisfy its obligations under this clause, in addition to any other remedy the Seller may have, the Buyer and Seller agree that a genuine pre-estimate of the damages suffered by the Seller arising from the Buyer's breach is not less than \$10,000.00.

14. Goods and Services Tax

- 14.1 GST means the GST under the GST Act.
- 14.2 The Purchase Price is inclusive of GST which has been calculated under the margin scheme under Division 75 of the GST Act.
- 14.3 The Buyer acknowledges and agrees that the Seller will apply the margin scheme and the Buyer will not be entitled to claim any input tax credit for GST paid for the acquisition of the Lot as a result of the application of the margin scheme.

15. Foreign Buyer

- 15.1 The Buyer will immediately upon request of the Seller at any time (whether made before or after the Settlement Date) give the Seller such information concerning the Buyer and, if the Buyer is a company, its officers and shareholders, and if the Buyer is a Trust, its beneficiaries, as the Seller requires in order to comply with any reporting requirements imposed on it for the purposes of the *Foreign Acquisitions and Takeovers Act 1975*, (if applicable).

16. Assignment by Seller

- 16.1 The Seller shall have the right to assign its interest in the Estate, the Lot and its interest in this Contract to another entity ("the Assignee").
- 16.2 If the Assignee enters into a deed of covenant to be bound by this Contract in place of and to the same extent as the Seller then the Assignee shall be deemed to be the Seller under this Contract, and the Seller shall be released and indemnified from its obligations under this Contract.
- 16.3 The Buyer is not entitled to claim any compensation, damages or any other thing, or to terminate this Contract as a result of any assignment by the Seller in accordance with this clause.

17. Personal Guarantee

- 17.1 Each Guarantor confirms his request for the Seller to enter into the Contract, accepts all obligations specified in the Contract, agrees to be bound as a party to the Contract, and signs the Contract as a deed.
- 17.2 Each Guarantor agrees that they are liable jointly and severally to the Seller if the Buyer breaches the Contract. The Guarantor agrees to pay the Seller any and all money for the Seller's loss resulting from the breach.
- 17.3 Each Guarantor is liable:
- (a) even if the Seller does not sue the Buyer or does not enforce all of the Seller's rights against the Buyer, or the Seller delays in doing so;
 - (b) even if the Contract is varied;

- (c) even after the Contract is terminated - for any breach that occurred before the Contract was terminated or arose out of the Contract being terminated;
- (d) even if a Guarantor has not signed the Contract;
- (e) even if the Seller has breached the Contract;
- (f) even after the Seller has assigned the Seller's rights under the Contract.

- 17.4 The Seller may recover from the Guarantors damages for the Seller's losses in enforcing this guarantee.
- 17.5 The Guarantors indemnify the Seller against any liability, loss and costs incurred by the Seller resulting from the Buyer's breach of the Contract.
- 17.6 If the Seller sells the Land, the Seller may also assign the benefit of all of the Guarantor's obligations in this clause.
- 17.7 In this clause, Guarantor includes the parties (if any) named in the Reference Schedule or if none are named includes where applicable each of the directors and secretary of the Buyer, including in the Buyer's capacity as trustee, as at the Contract Date (in accordance with ASIC records).

18. Maintenance Period

- 18.1 The Seller and Buyer agree and acknowledge that the footpaths, stormwater, water and sewerage Services are and shall remain the property of Queensland Urban Utilities and/or Council.
- 18.2 The Buyer must not make or allow to be made (either directly or indirectly, through action or inaction) any damage or variation to the level, location or access of the Services without the prior written consent of Queensland Urban Utilities and/or Council.
- 18.3 The Buyer indemnifies the Seller for any cost incurred or loss suffered, including but not limited to legal fees on an indemnity basis, as a result of the Buyer's failure to comply with SC18.2.
- 18.4 In the event the Buyer fails to comply with SC 18.2 and Queensland Urban Utilities and/or Council requires rectification works, the Buyer must complete the works specified within 72 hours of receiving a notice. If the Buyer fails to complete those works to the relevant standard then the Seller may carry out those works without further notice to the Buyer and may recover any costs as a liquidated debt from the Buyer.
- 18.5 Any amount claimed by the Seller under this SC must be paid by the Buyer within seven (7) days of a demand being made.
- 18.6 The Seller, Queensland Urban Utilities or the Council may enter and access the Lot to inspect the Services after giving 72 hours' notice to the Buyer at any time prior to the works being accepted "off-maintenance" by Queensland Urban Utilities and/or the Council.
- 18.7 This SC does not merge on Settlement and will be enforceable against the Buyer by the Seller until the works are accepted "off-maintenance" by Queensland Urban Utilities and/or the Council

19. Replacement of Trees

- 19.1 The Buyer acknowledges and agrees that the Seller's initial provision of certain trees and plants (if any) throughout the Estate may be in compliance with the Development Approval and this SC passes the continuing obligations for the maintenance and replacement of any trees and plants under the Development Approval or any other agreement (if any) to the Buyer.
- 19.2 For a period ending 18 months after the Settlement Date, the Buyer shall be solely responsible for the replacement and upkeep of any trees and plants (and all associated costs) located on footpaths immediately in front of the Property. The Buyer accepts this obligation as an essential condition of the Contract and will repair or replace any tree or plant that may be damaged during this period in accordance with the terms of any notice from the Seller.

- 19.3 In the event the Buyer does not comply with any notice under this SC within a reasonable time, the Seller may, in its absolute discretion, repair or replace any tree or plant referred to in SC 19.2 and recover all costs incurred as a result of doing so from the Buyer as a debt due and owing.
- 19.4 To remove doubt, the Buyer hereby indemnifies the Seller for any costs incurred or losses suffered as a result of the Buyer's failure to comply with this SC including, but not limited to, legal costs on an indemnity basis.
- 19.5 This SC does not merge on Settlement.

20. No alteration of Services

- 20.1 The parties agree and acknowledge that the Services and manholes are and shall remain the property of Queensland Urban Utilities.
- 20.2 The Buyer must not make or allow to be made (either directly or indirectly, through action or inaction) any variation to the level, location or access of the Services or manholes without the prior written consent of Queensland Urban Utilities and the Seller.
- 20.3 The Buyer indemnifies the Seller for any cost incurred or loss suffered, including but not limited to legal fees on an indemnity basis, as a result of the Buyer's failure to comply with this Special Condition.
- 20.4 In the event the Buyer fails to comply with this Special Condition, the Seller or Queensland Urban Utilities may give notice to the Buyer to complete rectification works to a certain standard. The Buyer must complete the works specified within 48 hours of such a demand being made, failing which, the Seller may conduct any or all works specified without notice and may recover any costs of doing so as a liquidated debt from the Buyer.
- 20.5 Any amount claimed by the Seller under this SC must be paid by the Buyer within seven days of a demand for such amount being made.
- 20.6 This SC does not merge on Settlement and will be enforceable against the Buyer until the Seller has formally handed over responsibility for the maintenance of the Services to Council.

21. Severance

- 21.1 If any term or part of a term of this Contract is or becomes illegal or unenforceable, such term or part thereof may be severed from this Contract and the remaining terms or parts of the term of this Contract continue in force.

22. Compliance with Laws

- 22.1 The Buyer accept any liabilities, obligations, requisitions, directions, recommendations notices now or in the future regarding the Lot, however arising including by operation of law.

23. Electronic Communication

- 23.1 For the purposes of sections 11 and 12 of the *Electronic Transactions (QLD) Act 2001*, the parties consent to information being given by electronic communication.

24. Amendments to Terms of Contract (for Houses and Residential Land (11th Edition))

- 24.1 The REIQ Terms of Contract for Houses and Residential Land (11th Edition) are amended as set out in this SC.
- 24.2 Clause 1.1(2)(b) is amended by deleting the words "adjusted under clause 2.6".
- 24.3 Clauses 2.3, 2.4, 4, 5.7, 7.2, 7.6 (3), 7.7, 8.2, 8.3 and 8.5 are deleted.

- 24.4 Clause 2.6(1) is amended by deleting the words from "The Buyer...the Settlement Date" and inserting after "Settlement Date", the words "and if the Seller has granted an extension of time of the Settlement Date, the Buyer acknowledges that it is liable for Outgoings from the original Settlement Date".
- 24.5 Clauses 2.6(2) to 2.6(7) inclusive are deleted and replaced with the following: "2.6(2) Outgoings must be adjusted:
- (a) if they are paid, on the amount actually paid; and
 - (b) if they are unpaid, on the amount payable disregarding any early payment discount.
- 2.6(3) If there is no separate assessment of an Outgoing for the Lot at the Settlement Date, then the amount of the Outgoing to be adjusted is that proportion of the latest assessment for the Estate equal to the ratio of the area of the Lot to the area of all land in the Estate (or otherwise) to which the assessment relates.
- 2.6(4) The Buyer is not able to:
- (a) require a retention or deduction from the Purchase Price for any unpaid Outgoings; or
 - (b) make or demand any payment from the Purchase Price for Outgoings except in the event the Buyer is appointed agent for the Office of State Revenue in respect of the collection of unpaid land tax.
- 2.6(5) If land tax is unpaid at the Settlement Date, then the Seller must pay the land tax within a reasonable time after an assessment issues.
- 2.6(6) The amount of land tax on the Lot will be calculated on the assessment that the Office of State Revenue would issue for the Estate for the land tax year current at the Settlement Date on the basis that the Seller is a single corporation and the Estate is the only land owned by the Seller.
- 2.6(7) If an Outgoing is adjusted on an amount that proves to be different from the actual amount of the Outgoing for the relevant period, then either party may require a re-adjustment. The Seller need not comply with an obligation to pay an Outgoing until the re-adjustment is made."
- 24.6 Clause 2.6(12) is deleted and the following inserted:

"2.6(12) "The cost of Bank cheques payable at Settlement are the responsibility of the Buyer."

- 24.7 Clause 8.1 is varied by deleting the words "Contract Date" and inserting the words "Settlement Date".

25. Design Guidelines and Building Covenants

- 25.1 The Buyer acknowledges having received a copy of the Design Guidelines and Building Covenants prior to the Buyer signing this Contract.
- 25.2 The Buyer and the Seller acknowledge and agree that the Design Guidelines and Building Covenants form part of this Contract and continue to be binding to the maximum extent permissible at law notwithstanding completion of this Contract.
- 25.3 The Buyer purchases the Lot subject to and agrees to be bound by the provisions of the Design Guidelines and Building Covenants (including the Noise Covenant as applicable) as though the obligations on the Buyer detailed in the Design Guidelines and Building Covenants were warranties by the Buyer forming part of this Contract.
- 25.4 The Buyer acknowledges and agrees that it is in the interests of the Buyer and all owners of any lots in the Estate from time to time that the provisions of the Design Guidelines and Building Covenants are complied with to ensure the ongoing safe use and enjoyment of the Estate.
- 25.5 The Buyer acknowledges that the Seller may in its discretion amend the Design Guidelines and Building Covenants from time to time as the Seller considers necessary.

25.6 The Buyer may not bring any action or make any claim against the Seller in respect of:

- (a) any change to the Design Guidelines and Building Covenants from time to time; and
- (b) any non-compliance with the provisions of Design Guidelines and Building Covenants by any third party or by the Seller.

25.7 The failure of the Seller at any time to insist on performance of any covenant or provision of this Contract or of the Design Guidelines and Building Covenants is not a waiver of the Seller's right at any later time to insist on performance of that or any other covenant or provision of this Contract or of the Design Guidelines and Building Covenants.

26. Counterparts

26.1 This Contract may be executed in any number of counterparts (including by facsimile or other electronic means). Each counterpart is deemed an original and all the counterparts together constitute one instrument, which is deemed to be dated on the earlier of the date of exchange or the date acceptance is communicated in writing (including by facsimile or other electronic means).

EXECUTED as a Deed

SIGNED by the **GUARANTOR(S)**

in the presence of:)
)
)

Signature of witness

Signature of Guarantor(s)

Name (please print)

Name(s) of Guarantor(s)

SIGNED by the **GUARANTOR(S)**

in the presence of:)
)
)

Signature of witness

Signature of Guarantor(s)

Name (please print)

Name(s) of Guarantor(s)

ANNEXURE “B”

DESIGN GUIDELINES AND BUILDING COVENANTS

(also referred to herein as the “Building Covenants”)

“Deepwater Estate”

211 Kluver Street, Bald Hills

The Buyer (“you, your”) acknowledges that the Property forms part of a residential estate and that the Seller (“we, us, Developer”) intends to establish a high standard of well-designed homes in the estate.

INTRODUCTION

The Design Guidelines and Building Covenants -Essential Points

- The Design Guidelines and Building Covenants including any noise covenant where applicable are part of your land sales contract and therefore are legally binding.
- Interpretation of the provisions of the Design Guidelines and Building Covenants are at the absolute discretion of the Developer.
- The design of your home and/or any improvement on your land must meet the requirements of the Design Guidelines and Building Covenants.
- The Developer encourages individuality and innovation in design and reserves the right to approve designs which may not meet the requirements of the Design Guidelines and Building Covenants but which are considered by the Developer in its sole discretion to be of outstanding merit.
- Construction of your home must commence and finish within certain time frames as stipulated in the special conditions of your land sales contract.

COVENANTS

The buyer covenants with the Seller as follows:

1. COVENANTS TO BE GIVEN TO ARCHITECT ETC.

The Buyer must give a copy of these Building Covenants to the Buyer’s architect, builder and all contractors.

2. APPROVAL PROCESS

The documents listed below must be submitted to the Seller for approval before building plans are lodged for approval by the Brisbane City Council or a private building certifier:

- Floor plans
- Site plans
- Elevations
- Fencing and Driveway details
- External Materials Selection, including colours

These documents must be forwarded to the Seller at the following address:

Attention: Chris McGirl, East Coast Gravel, PO Box 260 Wavell Heights North, Qld. 4012

Approval will generally be given within 5 business days of receipt and subject to the Seller being satisfied with the documents in its absolute discretion.

3. COMPLIANCE

- 3.1 All structures and improvements on the Property must be constructed in accordance with all laws, council requirements and approved by the Brisbane City Council or any other authority or private certifier having jurisdiction for the Property.
- 3.2 The Buyer acknowledges that approval by the Seller under clause 2 of these Covenants does not constitute any agreement or representation as to the suitability or fitness of the plans or compliance with all legal requirements.

4. PROPERTY USE

- 4.1 The property may only be used for a single unit private dwelling. Semi-detached or duplex construction is not permitted generally and approval for such development is in the sole discretion of the Seller and subject to the Buyer obtaining all lawful approvals.
- 4.2 No building that has been built on another property may be transported, built or placed on the property.

4.3 Motor vehicles

The dwelling house will provide adequate under roof space for at least one (1) motor vehicle in a fully enclosed garage, built at the same time as the dwelling. All garages must be set back a minimum of 900mm from the front building line.

4.4 Frontage and boundary relaxations

It is the responsibility of the Buyer to obtain all necessary approvals for any relaxation relevant to applicable building setback (this includes building to side boundaries).

4.5 Entry and Street Address

Houses are to have a defined entry when viewed from the street. An entry can be defined by incorporating entry features such as an entry portico, roof with prominent vertical supporting elements or other substantial entry statement.

Where a house has dual frontages to the street the design of building facades should present to both frontages to provide an attractive "street address". Where a house is proposed on a corner lot, the main entry is to face the Primary Street Frontage.

4.6 External Walls

All external walls of the dwelling must be constructed from clay brick, masonry rendered block or other texture coated or rendered materials. Materials such as feature panels, slate panels, linear board etc may be used on the external walls as a "feature" only and should be clearly identified in the elevations submitted for covenant approval.

4.7 Roofing

The roof of the main dwelling must be constructed with Colorbond or tile finishes, non-reflective material or concrete or terracotta tiles.

4.8 Driveways

All driveways must extend continuously for their full width and must be completed prior to occupation.

4.9 Workmanship and materials

No second hand or sub-standard materials are to be used in any structure including fences.

5. FENCING

No fence will be constructed on a corner lot or as a front boundary fence, forward of the building set-back and on one or more street frontages unless such structure is consistent with the following:

- (a) Brick or bagged or rendered columns with timber or aluminium battens or rendered concrete blockwork as infill;
or
- (b) Timber upright posts minimum of 150mm squared with timber or aluminium batten infill and colour co-ordinated with the dwelling house.
- (c) Fences are to be a maximum height of 1.8 metres above the natural ground level or unless any development condition applying to the Estate requires a different height.

Side and rear boundary fencing must be 1.8m in height and be constructed as good neighbour timber fencing with capping and return to the house a minimum of 1.0m behind the front building wall.

6. CONSTRUCTION AND MAINTENANCE OBLIGATIONS

- (a) The purchaser is responsible for controlling the builder's activities. Damage to community property including but not limited to, street trees, gardens and footpaths during construction will be at a cost to the purchaser for replacement. Unless proven otherwise, prior to house construction, all community property is deemed to be in new and working/growing condition. Construction activity must be confined to the boundaries of the particular lot, including but not limited to, sediment control.
- (b) Access to adjoining lots requires the permission from adjoining lot owners for temporary storage of materials, parking etc. Sites must be kept in a clean and safe state at all times. Builders are permitted to advertise their business with one sign per lot. The sign must be sited on the property and no larger than 750mm x 750mm.
- (c) For lots with sewer manholes, manholes are not to be covered. All statutory requirements apply.
- (d) The buyer will not allow any rubbish including site excavation and building materials to accumulate on the Property (or adjoining property) or allow excessive growth of grass or weeds upon the Property. If the Buyer does not comply with clause 6 (d) then the Seller and/or the Seller's agents or contractors may enter on the Property for the purpose of generally tidying up the Property including, without limitation, slashing or mowing grass or slashing weeds. The Buyer will pay to the Seller on demand the reasonable costs of carrying out such work.
- (e) The Buyer must ensure that construction work is carried out progressively and construction work must not stop for a period longer than one (1) month.

- (f) You must complete construction of building works within 24 months of settlement of your purchase of the Property.

7. LANDSCAPING

All lawn areas must be turfed or landscaped within 2 months of practical completion of the dwelling.

8. DESIGN APPROVAL PROCESS

8.1 Buyer Responsibility

You are responsible for obtaining all statutory approvals and complying with all statutory requirements associated with any Building Work or Landscaping Work on your land. Your Building Work or Landscaping Work must be constructed/carried out strictly in accordance with these Design Guidelines and Building Covenants.

9. BREACH OF COVENANTS

If the Buyer fails to comply with the terms and requirements of the covenants, the Seller may issue a notice requiring the Buyer to rectify the default and pay all legal costs incurred with such notice within a reasonable time and should the Buyer not comply with such notice within the time stipulated therein then the Buyer hereby agrees to pay the Seller by way of liquidated damages the greater of:

- (a) \$10,000.00; or
- (b) an amount equal to the Seller's estimate (determined acting reasonably) of the costs of rectification of any building or other work carried out by the Buyer to bring the building or other works into compliance with these Building Covenants.

10. RELAXATION

The Buyer may apply to the Seller for a relaxation from these Covenants but the Seller is not bound to grant any relaxation. Any requests for relaxation must be made in writing before any design or work is approved under clause 2 and must contain sufficient information and reasons for seeking a relaxation.

11. BUYER TO OBTAIN LIKE COVENANTS

You will not sell, transfer or otherwise dispose of the Property or any part of it to any person without first obtaining from that person a Deed of Covenant in favour of the Seller to be bound by the same terms and conditions as these Building Covenants.

12. DISCLAIMER

The Developer reserves the right to vary the requirements of the Design Guidelines. Unless otherwise indicated, where a relaxation or variation is granted, it is for a specific lot and is not to be taken as a variation to the Covenant & Design Guidelines as a whole.

The Buyer should seek expert advice with respect to the soundness, structural or otherwise, of any proposal of the construction of improvements on the Land.

The Seller/Developer shall not, in any circumstances, be liable for any damage or loss (including direct, indirect and consequential damage or loss):

- (a) caused to the Buyer through the negligent construction of improvements on the Land; or

- (b) to any person in connection with any owner of a lot in the Estate not complying with these Design Guidelines and Building Covenants.

Annexure “C”
“Deepwater Estate”
RESALE DEED

THIS DEED is made the day of .

BETWEEN

(“the Seller”)

AND

(“the Buyer”)

AND EAST COAST GRAVEL PTY LTD ACN 009 931 239

(“East Coast Gravel”)

RECITALS:

- A. The Seller is the owner of the Lot which is purchased from East Coast Gravel pursuant to the Original Contract.
- B. The Original Contract contained certain covenants in favour of East Coast Gravel and obliged the Seller to obtain from any buyer of the Lot a deed whereby that buyer agrees to be bound by the Covenants.
- C. By contract of sale dated , the Seller has sold the Lot to the Buyer.
- D. The Buyer has entered into this Deed to acknowledge that it is bound by the Covenants.

DEED:

1. Definition and Interpretation

1.1 In this Deed unless the context otherwise requires:-

Covenants means each of the covenants contained in clauses 9, 10, 12, 13 and 25 of the Original Contract.

Lot means the land described as Lot## on SP ##, County of Stanley, Parish of Nundah.

Original Contract means the Contract dated on or about for the sale and purchase of the Lot between East Coast Gravel and the Seller, which may be attached to this Deed for identification purposes.

Resale Deed means a deed in the form of this Deed.

Settlement Date means the date the Buyer completes its purchase of the Lot from the Seller

1.2 In this Deed, unless inconsistent with or repugnant to the context:

- a) Reference to the singular number shall include the plural number and vice versa;

- b) Reference to any particular gender shall include all other genders;
- c) Words importing natural persons includes companies and vice versa;
- d) Covenants by or on behalf of two or more parties hereto shall bind them jointly and each of them severally;
- e) A party includes that party's personal representatives and assigns.

2. Buyer bound by covenants

2.1 The Buyer hereby covenants and agrees with East Coast Gravel that as and from the Settlement Date it is bound by and will comply with the Covenants as though it were the buyer referred to therein.

3. Buyer's obligation to obtain Resale Deed

3.1 The Buyer cannot dispose of the Lot or any share or interest in the Lot (by transfer or otherwise) without first obtaining at its costs from the proposed transferee and delivering to East Coast Gravel, a Resale Deed by which the transferee covenants to be bound by and comply with the Covenants.

EXECUTED as a Deed.

SIGNED by the **SELLER** in the presence of:

)
)
)

Signature of witness

Signature of Seller

Name (please print)

SIGNED by the **BUYER** in the presence of:

)
)
)

Signature of witness

Signature of Buyer

Name (please print)

SIGNED by EAST COAST GRAVEL PTY LTD A.C.N 009 931 239 in accordance with s 127 Corporations Act 2001 (Cth)

