

ANNEXURE J – CONSTRUCTION WARRANTIES

[REDACTED]

[REDACTED]

[REDACTED]

Item 30. THE BUILDING ACT 2004 (ACT)

Application of Building Act

- 1. Notwithstanding s.87(a) of the *Building Act 2004 (ACT)* (**the Building Act**), the parties:
 - a. acknowledge that the residential buildings to be constructed as part of the Works are being carried out for the ultimate benefit of the third party purchasers (as described in the purpose in Item 3 of the Contract Information);

- b. acknowledge that the Principal wishes to ensure that the third party purchasers receive the benefit of the statutory regime set out in Part 6 of the Building Act (including the warranties that are implied by s.88 of the Building Act and the rights to claim against the insurance policies required in Division 6.3) noting that an owner's successors in title would ordinarily succeed to the right of the owner in relation to those statutory warranties and claims against the fidelity fund;
 - c. agree to contractually bind themselves to Part 6 of the Building Act (including those parts of the *Building (General) Regulation 2008* (ACT) (**the Building Regulations**) that apply to the interpretation of the Building Act) as if that Part were extracted in full in this Item 30; and
 - d. agree that a reference to the Building Act and the Building Regulations includes all delegated legislation made under those instruments, and any amendments, consolidations, replacements or re-enactments of any of them.
2. The parties agree that to the extent that there is a change in the Building Act or the Building Regulations (from that which appears in this Special Condition) then the higher standard (either under this Contract, or the Building Act or Building Regulations) will apply.
3. For the purposes of this Item 30:
- a. the term "builder" is to be read as a reference to "the Contractor";
 - b. the term "completion day" is to be interpreted according to the Building Act and is not necessarily the Actual Date of Completion;
 - c. the term "contract" is a reference to this Contract (including the Special Conditions);
 - d. the term "owner" and "third party purchaser" mean the person(s) or operating authority(ies) to whom title in the land where the building was built is transferred under a contract for the sale of a residential building; and
 - e. the term "work" is a reference to the Works (in whole or in part), and all other words used in this Item 30 (which are defined in the Building Act or Building Regulations) have the meaning given to them under those instruments.
4. Item 30 is to be interpreted to the same standard as if Part 6 of the Building Act applied to the parties in the ordinary course.

Warranties & Defect Liability Period

5. The Contractor warrants the following in relation to the works:
- a. that the work has been or will be carried out in accordance with the Building Act;
 - b. that the work has been or will be carried out in a proper and skilful way and –
 - i. in accordance with the approved plans; or
 - ii. if the work involves or involved handling asbestos or disturbing friable asbestos – in accordance with approved plans that comply with the Building Act in relation to the asbestos;
 - c. that good and proper materials for the work have been or will be used in carrying out the work;
 - d. if the work has not been completed, and the contract does not state a day by which, or a period within which, the work is to be completed – that the work will be carried out with reasonable promptness;
 - e. if the owner of the land where the work is being or is to be carried out is not the builder, and the owner expressly makes known to the builder, or an employee or agent of the builder, the particular purpose for which the work is required, or the result that the owner desires to be achieved by the work, so as to show that the owner is relying on the builder's skill and judgment – that the work and any material used in carrying out the work is or will be reasonably fit for the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.

6. The warranties referred to in Item 30.1.c and in Item 30.4 end at the end of the period prescribed under the Building Regulations after the completion day for the work which (as at the date of this Contract) are:
 - a. for residential building work in relation to a structural element of a building – 6 years after the completion day for the work; or
 - b. for residential building work in relation to a non-structural element of a building – 2 years after the completion day for the work.
7. The warranties in this Item 30 are in addition to the warranties contained elsewhere in the Contract (including in other Special Conditions).
8. The right to seek remedial action for breaches of the warranties in this Item 30 and the Building Act (as incorporated in this Item 30) apply in addition to the rights and obligations set out in the *Defects* provisions in clauses 45, 46, 67 of the Contract (and all other clauses which aid in the interpretation of those clauses).

Complying residential building work insurance

9. The Contractor must obtain and maintain an insurance policy for insurable residential building work which complies with s.90 of the Building Act as if that section were extracted in full in this Item 30.9.
10. The parties agree that Division 6.3 of the Building Act applies as if it were extracted in full in this Item 30.10.

Assignment

11. In order for the third party purchasers to take the benefit of the contractual regime set out in this Item 30 the parties acknowledge and agree that:
 - a. the Principal may assign its rights and benefits under Item 30 to any third party purchaser(s) of the Works and must give notice of that assignment to the Contractor;
 - b. the Principal may (in its absolute discretion) determine who the third party purchaser(s) will be;
 - c. the Principal may assign its rights and benefits to multiple third party purchasers at any time and from time to time (such that the warranties, the defect liability period, and the insurance obligations set out in this Item 30 run with each block of land sold or transferred);
 - d. the Contractor must not take any adverse position or object to the standing of any third party purchaser to enforce the rights and benefits assigned to them by the Principal;
 - e. (notwithstanding any assignment) the Principal reserves its rights to enforce this Special Condition including Item 30.11.d (for its own benefit and for the benefit of any third party purchaser).
12. The Contractor indemnifies the Principal from and against any claim, action, loss, damage, expense of liability the Principal may sustain or incur in connection with a breach of Item 30.
13. The release of the *Post-Completion Undertaking* pursuant to clause 33.3.2 of the Contract does not (and is not to be construed as):
 - a. the Principal releasing the Contractor from any claim for breach of warranty under this Item 30 which are unknown as at the date of the release of the *Post-Completion Undertaking*; or
 - b. the Principal waiving any rights to enforce the claims referred to in Item 30.13.a (either in its own right or on behalf of any third party purchaser).