



COOPER GRACE WARD
LAWYERS

**BUYER'S INCENTIVE DEED
(Deposit Match)
'Providence – Heart and Soul of the
Valley'**

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MRF10201624 3453-1832-6538v7

BUYER'S INCENTIVE DEED

PARTIES

Daleswan	DALESWAN PTY LTD ACN 105 650 075
Buyer	The entity listed in Item 1 of the Schedule

BACKGROUND

- A. Daleswan is developing the Estate.
- B. The Estate is a master planned residential community in South Ripley.
- C. Daleswan wishes to encourage housing construction in the Estate and is offering the Buyer (and other buyers) housing design and construction incentives.
- D. Daleswan agrees to pay the Buyer the Payment if the Buyer strictly complies with the terms of this deed.

DEEDS

1. INTERPRETATION

Definitions

- 1.1 The meanings of the terms used in this deed are set out below.

Term	Meaning
Authority	includes any state or federal government, any semi or local government, authority, any statutory or public authority, instrumentality or body having authority or jurisdiction over the Estate
Building Approval	the approval required to construct the Works (including the Home) pursuant to the Building Covenants
Building Covenants	the document or documents known as the 'Building Covenants' (including all annexures to it) in respect of building improvements on the Lot and within the Estate (as amended by Daleswan from time to time)
Business Day	a day (except a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane, Queensland
Buyer	the buyer under the Contract of Sale
Contract of Sale	a contract for the sale and purchase of the Lot entered into between Daleswan and the Buyer



Term	Meaning
Estate	the development known as 'Providence - Heart and Soul of the Valley' developed by Daleswan for residential purposes at South Ripley, Queensland (in which the Lot is located)
GST	any consumption, goods and services or value added tax by whatever name called, imposed, charged or collected by any federal or state government that operates at any time or times including GST as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
Home	a dwelling house together with (including but not limited to) all landscaping, paving, fencing, internal fixtures and fittings and other works to be constructed by the Buyer on the Lot
Law	includes any requirement of any statute, rule, regulation, proclamation, ordinance or local law, present or future, and whether state, federal or otherwise
Lot	the lot specified in Item 2 of the Schedule
Payment	the amount specified in Item 3 of the Schedule in the form of a pre-paid Visa debit card
Requirement	includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any authority or pursuant to any Law, whether in writing or otherwise, and notwithstanding to whom such Requirement is addressed or directed
Settlement Date	the settlement date under the Contract of Sale
Works	the whole of the work to be performed by the Buyer in respect of the construction of the Home including fixtures and finishes to practical completion, design work, variations, remedial work, temporary work, fit out, landscaping and fencing

Construction

1.2 In this deed:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) an obligation imposed by this deed on more than one person binds them jointly and severally;
- (d) a reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it or amendment of it and a regulation or statutory instrument issued under it;
- (e) all schedules (as may be amended by the parties in writing from time to time) form part of this deed;

- (f) headings have been inserted for guidance only and do not limit or govern the construction of this deed.
 - (g) a reference to 'writing' or 'written' and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;
 - (h) if a reference is made to any person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the person, body or Authority that then serves substantially the same objects as the person, body or Authority that has ceased to exist;
 - (i) a reference to 'corporation' and any other words or expressions used or defined in the *Corporations Act 2001* (Cth) will, unless the context otherwise requires, have the same meaning as given to them in the *Corporations Act 2001* (Cth);
 - (j) a reference to a thing includes the whole and each part of it;
 - (k) 'including' and 'includes' means includes without limitation;
 - (l) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (m) a reference to an deed or a document is to that deed or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this deed; and
 - (n) if any date falls on a Saturday, Sunday or public holiday in Brisbane then the date will be the Business Day next following such date.
- 1.3 All provisions of this deed are so far as possible construed so as not to be invalid, illegal or unenforceable in any respect. If any provision is illegal, invalid or unenforceable, that provision will so far as possible be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character. If any provision or part of it cannot be so read down, such provision or part will be deemed to be void and severable and the remaining provisions of this deed will not in any way be affected or impaired.
- 1.4 Unless otherwise stated, no word or provision of this deed limits the effect of any other word or provision of this deed.
- 1.5 Daleswan and the Buyer agree that:
- (a) the terms contained in this deed constitutes the whole of the deed in respect of the subject matters of this deed between the parties and all previous negotiations and deeds are negated;
 - (b) no further terms are implied or arise between the parties by way of collateral or other deed made by or on behalf of the parties on or before or after the execution of this deed, and any implication or collateral or other deed is excluded and negated; and
 - (c) no information, representation or warranty by Daleswan or Daleswan's employees, agents or contractors was supplied or made with the intention or knowledge that it would be relied upon by the Buyer in entering into this deed.
- 1.6 This deed is governed by Queensland law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that state and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by

claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

1.7 This deed is binding on each of the parties' successors and permitted assigns.

2. CONDITIONAL DEED

2.1 This deed and the arrangement contemplated in it is conditional upon:

- (a) the Buyer completing the Contract of Sale;
- (b) the Buyer submitting an application (in compliance with the Building Covenants) for the Building Approval; and
- (c) the Buyer complying with the terms and conditions for Daleswan's promotion referred to as 'Deposit Match'.

3. BUYER'S ACKNOWLEDGEMENTS

3.1 Daleswan may vary and update the Building Covenants. Daleswan will give the Buyer notice of any variation or update of the Building Covenants within a reasonable time.

3.2 No approval granted by Daleswan under this deed constitutes any deed or representation:

- (a) as to the adequacy, suitability or fitness of any plans of the Works;
- (b) as to the siting of the Home; or
- (c) that the relevant Authority (including a private certifier) will grant its approval,

and the Buyer acknowledges the Buyer will not place any reliance on such approval.

4. PAYMENT

In consideration of the Buyer complying with the terms of this deed and the satisfaction of clause 2.1, Daleswan will pay to the Buyer the Payment for the Lot within 10 Business Days after receiving written notice from the Buyer that all of the conditions set out in clause 2.1 have been satisfied.

5. ASSIGNMENT

The Buyer must not assign its rights and obligations under this deed without the prior written consent of Daleswan.

6. DEEDS WITH OTHER BUYERS

6.1 The Buyer acknowledges that:

- (a) Daleswan may enter into arrangements with other buyers within the Estate;
- (b) Daleswan does not warrant that all deeds with other buyers within the Estate contains same or similar terms and conditions to this deed;
- (c) there may be some terms and conditions in this deed that are not included in deeds with other buyers and vice versa; and



- (d) Daleswan may choose not to enforce all covenants, terms and conditions in all deeds with other buyers equally or at all.
- 6.2 The Buyer acknowledges and agrees that Daleswan is not liable to the Buyer in respect of any of the matters set out in clause 6.1, including but not limited to:
- (a) any difference between this deed and any deed with other buyers; or
 - (b) enforcing or not enforcing some or all of its rights under deeds with other buyers.

7. CONFIDENTIALITY

Except as required by law or stock exchange listing rules, the terms of this deed must be kept confidential and may only be disclosed to:

- (a) the parties' professional advisers;
- (b) other persons with the prior written consent of all parties, which may not be unreasonably withheld or delayed; and
- (c) any other party required by Law.

8. GST

- 8.1 All payments and other supplies set out in this deed are inclusive of GST.
- 8.2 If GST is or will be payable on any supply under this deed, then the recipient of that supply must pay the supplier on demand the sum equal to any GST payable by the supplier in respect of that supply.
- 8.3 The recipient's obligation to pay GST on an amount under this clause is subject to a relevant tax invoice being delivered by the supplier to the recipient.
- 8.4 To the extent that one party is required to reimburse the other party for costs incurred by the other party, those costs do not include any amount in respect of GST for which the party is entitled to claim an input tax credit.

9. COSTS

- 9.1 Each party must (unless this deed provides to the contrary) pay its own costs of the preparation, completion, execution and performance of this deed or any variation to or surrender of this deed.
- 9.2 The Buyer is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this deed, any document executed under it or any dutiable transaction evidenced or effected by it.

10. NOTICES

- 10.1 Notices under this deed must be in writing signed by a party or its solicitor. Notices are considered to be signed if signed by electronic signature.
- 10.2 Notices are effectively given if:
- (a) delivered or posted to the address of the other party or its solicitor;

- (b) sent to the facsimile number of the other party or its solicitor, or
- (c) delivered by email to the email address of the other party or its solicitor;

which are set out in this deed as varied by notice.

- 10.3 Posted notices will be treated as given two Business Days after posting.
- 10.4 Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- 10.5 Notices sent by email will be treated as not given until they are capable of being retrieved in accordance with section 24 of the *Electronic Transactions (Qld) Act 2001*.
- 10.6 Notices by a party's solicitor to the other party or its solicitor will be treated as given with the first party's authority.
- 10.7 For the purposes of section 11 and 12 of the *Electronic Transactions (Qld) Act 2001*, the parties consent to information being given by electronic communication.

11. GENERAL

- 11.1 The covenants, conditions and provisions of this deed that are capable of having effect after the termination of this deed will not merge but will continue to have full force and effect at all times.
- 11.2 Nothing in this deed constitutes or is deemed or construed as constituting or creating the relationship of partnership or of principal and agent between Daleswan and the Buyer. The Buyer is an independent contractor and is not and must not purport to be a partner or joint venturer with Daleswan. The Buyer must at no time act as the agent of or hold itself out as being the agent of Daleswan.
- 11.3 Each party must execute such further documents and do anything else that is reasonably necessary to give effect to the terms of this deed.
- 11.4 Notwithstanding that the law of contract may no longer recognise or might never have recognised a doctrine or concept of waiver, a party may waive its right to insist upon the performance of a condition or obligation under this deed that is to be performed by the other party. Such waiver must be in writing and signed for or on behalf of the party waiving the right to performance of such obligation or condition. In the absence of a waiver in writing as permitted under this clause, no failure or forbearance by a party to insist upon any right to performance of a condition or obligation of the other party can amount to, under any circumstances, an election between existing rights, a representation sufficient to ground an estoppel or a variation whereby that other party is relieved or excused from performance of such condition or obligation.
- 11.5 In entering into this deed, the Buyer has not relied on any statement, representation or promise (other than those contained in this deed) by or on behalf of Daleswan (or any agent of Daleswan) either express or implied.
- 11.6 Where in this deed Daleswan's consent or approval is required, such consent or approval may be withheld or given with or without conditions by Daleswan in Daleswan's absolute discretion unless otherwise specifically provided under the terms of this deed. The grant of any such consent or approval must be in writing and, if not in writing, will be of no effect.
- 11.7 Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party pursuant to this deed or otherwise.



11.8 This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.



SCHEDULE

Item 1 The Buyer

.....
of

Item 2 Lot on SP (Stage)

Item 3 Payment

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SIGNED AS A DEED on the date the last party signed this document

SIGNED by **DALESWAN PTY LTD ACN 105 650 075** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by a director and a director/secretary or by an authorised officer (if applicable):)
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)
)
)
)

.....
Director

.....
Director/Secretary/Authorised Officer

.....
Name

.....
Name

.....
Date

.....
Date

SIGNED SEALED AND DELIVERED by the Buyer in the presence of:)
)

.....
Witness (not a party to this deed)

.....

.....
Name of witness

.....
Name

.....
Date

SIGNED SEALED AND DELIVERED by the Buyer in the presence of:)
)

.....
Witness (not a party to this deed)

.....

.....
Name of witness

.....
Name

.....
Date

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