

Deed of Variation of Agreement

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Deed of Variation of Agreement

Date	
Parties	
	The party set out in Item 2 in Schedule A (Owner)
	The Builder set out in Item 3 in Schedule A (Builder)
	The Guarantor set out in Item 4 in Schedule A (Guarantor)
Background	
A.	The Building Agreement was executed on the Agreement Date.
B.	The Parties wish to amend or vary the Building Agreement to remove all design obligations under the Building Agreement.
C.	The Parties record this amendment of the Building Agreement in accordance with this Deed.

Deed of Variation

1. Definitions and interpretations

1.1 Definitions

In this Deed, unless the context or subject matter otherwise require:

Agreement Date means the date specified as such in the Building Agreement, as set out in Item 5 of Schedule A;

Authorised Representative means:

- (a) in respect of a party which is a corporation:
 - (i) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - (ii) a person acting with the title or in the office of manager or director; and
- (b) in respect of each party, a solicitor of that party or a person nominated by notice to the other party as an authorised representative;

Builder means party specified as such in Item 3 of Schedule A;

Claims means actions, demands, losses, injuries, damages, suits, judgments, orders, decrees, costs and expenses of every description including, without limitation, consequential losses and damages;

Deed means this deed of variation of Building Agreement (including the recitals, the schedules, appendices and exhibits to it), as it may later be amended or supplemented by the parties in writing;

Deed Date means the date of this Deed specified as such in the Recitals and In Item 1 of Schedule A;

Government Authority means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;

Guarantor means the party specified as such in Item 4 of Schedule A;

Owner means the party specified as such in Item 2 of Schedule A;

Building Agreement means the Building Agreement signed and executed by the Parties on the Agreement Date and Annexed in Annexure A; and

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Parties means the Owner, the Builder and the Guarantor; and

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

1.2 Interpretation

In the interpretation of this Deed, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;

- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Deed;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time; and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Amendment of Building Agreement

Subject to later clauses of this Deed, the Building Agreement is amended as follows:

- (a) Inserting the following definition into clause 1.1:
- (b) Deleting clause _____:
- (c) Amending clause ____ to read as follows:
- (d) Replacing Item _____ of Schedule ____ with:

3. Building Agreement Amendment

- (a) The Building Agreement is varied, amended and altered by the terms of this Deed and provisions, words or parts of the Building Agreement which conflict with or are inconsistent with the amendments in this Deed:
 - (i) will be read subject to the amendments in this Deed;
 - (ii) are removed or deleted to the extent that they conflict with or are inconsistent with the amendments in this Deed; and
 - (iii) will be read consistently with the amendments in this Deed.
- (b) Where more than 1 interpretation of any provision of the Building Agreement, as amended by this Deed, is possible, the interpretation which is consistent with this Deed prevails.

- (c) The terms of the Building Agreement as amended by this Deed apply in respect of the Building Agreement and the remaining provisions of the Building Agreement continue in full force and effect.
- (d) In the event of any of any inconsistency between the terms of this Deed and the Building Agreement, then this Deed will, subject to the following clause, prevail to the extent of any inconsistency unless prohibited by law.

4. Acceptance

By accepting this Deed the parties:

- (a) Each party will bear their own costs in respect of the preparation, negotiation and execution of this Deed;
- (b) accept the Deed as proposed;
- (c) acknowledge that they have been advised to obtain legal and financial advice before executing this Deed; and
- (d) acknowledge that they have fully read and understand and accept the contents of this Deed.

5. Confidentiality

The parties hereby covenant that the terms of this Deed and all matters associated with it and all information exchanged between the parties pursuant to this Deed or during negotiations preceding it will be and remain confidential and will not be disclosed to any person except:

- (a) as required by law;
- (b) with the written consent of the other parties to this Deed;
- (c) to their legal or accounting advisors; or
- (d) for the purposes of enforcing this Deed.

6. Proper Law, Jurisdiction

6.1 Choice of law

This Deed is governed by and construed in accordance with the laws of the Commonwealth of Australia.

6.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Deed or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in Queensland.

6.3 Submission to jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

6.4 Service of process

A party may by notice appoint another person at a specified address in Queensland to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.

7. General Provisions

7.1 Costs

The Builders shall pay the costs of and incidental to the preparation, negotiation and execution of this Deed.

7.2 Independent Advice

Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Deed and has sought such advice as it deems necessary.

7.3 No Adverse Construction

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Deed or any part of it.

7.4 Variations

No variation of this Deed nor consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

7.5 Further assurances

Each party to this Deed shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by notice from another party to carry out and give effect to the terms and intentions of this Deed and to perfect, protect and preserve the Rights of the other parties to this Deed.

7.6 Liability of parties

If a party consists of more than one person:

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

7.7 Counterparts

This Deed may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

7.8 Warranty of authority

Each person signing this Deed:

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an Authorised Representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Deed on behalf of that party.

7.9 Severability

This Deed shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be 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; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Deed shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

7.10 Multi Capacity

If a party to this Deed is a party in more than one capacity, it is only necessary for that party to execute this Deed once and such execution shall bind that party in all capacities.

7.11 Delivery as a deed

Subject to express provisions in this Deed to the contrary, each party by signing or executing this Deed is deemed to unconditionally sign, seal and deliver this Deed as a deed, with the intention of being immediately legally bound by this Deed.

Schedule A

Item 1:	Deed Date	
Item 2:	Owner	
Item 3:	Builder	
Item 4:	Guarantor	
Item 5:	Agreement Date	

Annexure A Copy of Building Agreement

