

Dealing No.

Lodger (Name, address & phone number)

Lodger Code



OFFICE USE ONLY

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1. Covenantor

GANBROS PTY LTD A.C.N. 010 001 117
GANBOYS PTY LTD A.C.N. 010 001 108
GANSONS PTY LTD A.C.N. 010 001 126

2. Description of Covenant/Lot on Plan

Lot 1 on RP121293
Lot 4 on SP 312302

Title Reference

14324060
51197554

3. Covenantee

Minister for Economic Development Queensland

4. Description of Covenant (include reference to relevant section of legislation)

Pursuant to section 97A(3)(a)(i) and 97A (3)(c)(i) of the Land Title Act 1994, relating to the use of the lot in terms of the attached Schedule.

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and the attached Schedule.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Executed by Ganbros Pty Ltd A.C.N 010 001 117 in accordance with s127 of the Corporations Act 2001 (Cth)

.....
Director Signature

.....
Director Signature

.....
Full Name

/ /

.....
Full Name

Execution Date

Covenantor's Signature

PLANS AND DOCUMENTS referred to in the PDA DEVELOPMENT APPROVAL

Approval no: DEV2020/1124
Date: 22 December 2021



Executed by Ganboys Pty Ltd A.C.N 010 001 108 in accordance with s127 of the Corporations Act 2001 (Cth)

.....
Director Signature

.....
Director Signature

.....
Full Name

/ /

.....
Full Name

Execution Date

Covenantor's Signature

AMENDED IN RED

By: Chris Hinton
Date: 20 December 2021



COVENANT

Witnessing Officer

Executed by the Delegate of the **Minister for Economic Development Queensland**

..... signature

.....Signature

..... full name

.....Name

..... qualification

/ /

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 (eg Legal Practitioner, JP, C.Dec)

Execution Date

.....Title

Covenantee's Signature

Executed by Gansons Pty Ltd A.C.N 010 001 126 in accordance with s127 of the *Corporations Act 2001* (Cth)

.....
Director Signature

.....
Director Signature

.....
Full Name

/ /

.....
Full Name

Execution Date

Covenantor's Signature

**SCHEDULE/ENLARGED PANEL/
ADDITIONAL PAGE/DECLARATION**

Title Reference 50215128

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1 Interpretation

1.1 Definitions

In this Covenant unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings assigned to them:

Approved Plans means drawings and specifications for the Project which have been approved by the Covenantant in the Decision Notice.

Buildings means any structures, improvements, facilities, services and infrastructure on or to be constructed on the Covenant Area (including any material repairs, renovations, modifications or variations to the Buildings on the Covenant Area at the date of this Covenant).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane.

Covenant means this covenant comprising this Form 31 and Form 20.

Covenant Area means the Lot as defined herein.

Covenantant means the person named in Item 3 of Form 31 together with its successors in title and unless inconsistent with the subject matter or context, includes all persons for the time being authorised by the Covenantant or deriving any title or interest from the Covenantant (including any mortgagee, lessee, licensee, contractor, employee or agent).

Covenantor means the person named in Item 1 of Form 31 together with its successors in title and unless inconsistent with the subject matter or context, includes all persons for the time being authorised by the Covenantor.

Decision Notice means the PDA decision notice and approved plans dated [#insert Decision Notice date here] given by the Minister for Economic Development Queensland pursuant to section 89(1)(a) of the *Economic Development Act 2012*, including any approved amendments or changes.

Interim Park means the park to be provided in Stage 1B in accordance with the Interim Park Detailed Plan.

Interim Park Detailed Plan means the interim park described and depicted in section 2.1 The Green – Interim Park Detailed Plan on page 17 of the RPS Landscape Design Report and otherwise in accordance with the Decision Notice.

Lease means the Lease dated 12 June 2020 (Dealing number 720666540).

Lot means each lot described in Item 2 of the Form 31 Covenant and includes:

- (a) any estate or interest in, on, over or under the land; and
- (b) the airspace above the surface of the land and any estate or interest in the airspace; and
- (c) the subsoil of the land and any estate or interest in the subsoil; and
- (d) any part or parts of the land; and
- (e) any estate or interest created in respect of any of the above matters.

Permitted Use means the use of the Covenant Area and the Buildings for any of the following:

- (a) construction of Tower 1A and associated Murray Street improvement Works, and the Interim Park (Stage 1B) and associated Murray Street improvement Works in accordance with the Decision Notice including the Interim Park Detailed Plan;

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- (b) occupation of the existing Building on Lot 1 on RP 121293 pursuant to the Lease or for any other lawful use, but no later than 17 December 2030;
- (c) demolition, or partial demolition, of the existing Building on Lot 1 on RP 121293;
- (d) lawful use and occupation of any existing Building on Lot 4 on SP 312302;
- (e) construction of the Ultimate Park.

Planning Act means the Planning Act 2016 (Qld) or an Act which repeals and replaces it.

Planning Scheme means the Bowen Hills PDA Development Scheme in effect on the date of Registration of this Covenant.

Project means the use and development of the Covenant Area for the construction and delivery of the Interim Park and the Ultimate Park in accordance with the Permitted Use, including the demolition, or partial demolition, of the buildings and other ancillary uses.

Registration means registration under the Land Title Act 1994 (Qld). "Registered" has a corresponding meaning.

RPS Landscape Design Report means the report identified in item 36 of the Table of Approved Plans and Documents in the Decision Notice.

Ultimate Park Area means the area of the Ultimate Park as identified on the survey plan endorsed by EDQ.

Ultimate Park means the park located at the intersection of Thompson Street and Murray Street as depicted and described in section 2.3 The Green - Ultimate Park Layout Detailed Plan at page 19 of the RPS Landscape Design Report, and otherwise in accordance with the conditions in the Decision Notice, and identified on the survey plan endorsed by EDQ pursuant to the Decision Notice.

1.2 General

- (a) Headings are for convenience and ease of reference only and will not be relevant to or affect the construction, interpretation or meaning of this Covenant.
- (b) A reference to this Covenant includes any permitted variation, supplement to or replacement of this Covenant.
- (c) A reference to any agreement, statute, regulation, ordinance, local law or other instrument shall be deemed to extend to all agreements, statutes, regulations, ordinances local laws or other instruments amending, consolidating or replacing them.
- (d) Words indicating the singular number include the plural number and vice versa.
- (e) Words indicating one gender shall include all other genders.
- (f) A reference to a person includes a reference to corporations and other entities recognised by law and includes a reference to a person's legal personal representatives, administrators, successors, assigns and transferees.
- (g) A covenant or agreement on the part of two or more persons shall bind them jointly and severally and each such person must give consent as required by law to any release or variation of this Covenant.
- (h) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (i) Time is of the essence in respect of the Covenantor's obligations under this Covenant.
- (j) If the date for doing or giving anything under this Covenant is not a Business Day, then that thing must be done or given on the next Business Day.

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2 Purpose of Covenant

This Covenant is entered into between the Covenantor and the Covenantee pursuant to:

- (a) section 97A(3)(a)(i) of the *Land Title Act 1994* (Qld) to ensure that the Covenant Area is only used for the Permitted Use; and
- (b) section 97A(3)(c)(i) of the *Land Title Act 1994* (Qld) to ensure that the Covenant Area is maintained in the one ownership, and that neither Lot may be transferred to a person without the other Lot also being transferred.

3 Obligations on Covenantor

3.1 Covenant

The Covenantor agrees to:

- (a) not commence construction of the Project on the Covenant Area, except in accordance with the Decision Notice and the Approved Plans;
- (b) not transfer a Lot unless the other Lot is also transferred to the same ownership until the Ultimate Park is completed and delivered in accordance with the Decision Notice;
- (c) not give consent to the lessee under the Lease to remain in occupation of any part of the building within the Ultimate Park Area and the subject of the Lease after 17 December 2030;
- (d) in the event the Lease is terminated for any reason prior to 17 December 2030, to construct and deliver the Ultimate Park in accordance with the Decision Notice and any subsequent approval, within twelve months of the end of the Lease or 17 December 2031, whichever occurs first;
- (e) ensure that the Covenant Area is used only and solely for the Permitted Use from the date of the Registration of this Covenant; and
- (f) not use any part of the Lot, including outside the Ultimate Park Area, for a purpose or aspect of development other than the Permitted Use until the Ultimate Park is completed and delivered in accordance with the Decision Notice.

3.2 Application

To the maximum extent permitted by law, clause 3.1 applies regardless of the use of the Covenant Area that is allowed or permitted under:

- (a) the Planning Scheme;
- (b) any amendment to or replacement of the Planning Scheme; or
- (c) any former planning scheme or rights to develop the Covenant Area that were superseded by the Planning Scheme.

4 Obligations on Covenantee

4.1 Release of Covenant

The Covenantee agrees to register an instrument releasing the covenant once the Ultimate Park is completed and delivered in accordance with the Decision Notice.

5 Notification of Change of Ownership or Control

5.1 Event Definition

For the purpose of this clause, **Event**, includes:

- (a) an agreement to transfer, sell, lease, licence or otherwise deal with or dispose of the Covenant Area;
- (b) a transfer, sale, lease, licence or other dealing or disposal of the Covenant Area or any part of it;
- (c) any steps taken by a security holder to exercise its power of sale under a registered or unregistered security;
- (d) the appointment of a receiver, receiver and manager, liquidator or other external administrator or controller;
- (e) the death of a person;
- (f) the issue of a statutory charge for rates, taxes or other charges; or
- (g) any other circumstance,

allowing or which may allow a person other than the Covenantor to own, control, occupy or use the Covenant Area.

5.2 Notice Process

The Covenantor must notify the Covenantee in writing within 5 Business Days of any Event which occurs and that notice must detail the name and address of all parties to the agreement or Event and the nature of the change of ownership, occupation, control or use.

6 Covenantee's right of access

- (a) The Covenantor expressly authorises the Covenantee and its officers, agents, employees, contractors, and sub-contractors and other persons authorised by it at any reasonable time, upon giving reasonable notice in accordance with this clause during the term of this Covenant to enter, re-enter, remain on and leave the Covenant Area and to inspect and monitor the Covenant Area to determine if the provisions of this Covenant are being complied with.
- (b) The Covenantee must give reasonable notice of any intention to enter the Covenant Area except in cases of emergency or when the Covenantee on reasonable grounds considers that the delay in giving notice may be prejudicial to its rights or the Covenantor's obligations under this Covenant.

7 Default

7.1 Notice

If the Covenantor does not comply with one or more of the Covenantor's obligations under this Covenant, the Covenantee may, in its absolute discretion, without limiting any of its other rights, give the Covenantor a notice (**Notice to Comply**) requiring the Covenantor to take reasonable measures to comply with its obligations and/or rectify the noncompliance at the Covenantor's cost, as set out in the Notice to Comply.

7.2 Compliance

If the Covenantee issues a Notice to Comply, the Covenantor must comply with that Notice to Comply within 10 Business Days of service of it or within such other longer time as may be specified in the Notice to Comply, given the nature of the measures specified in the Notice to Comply. The time specified must allow a reasonable time for compliance.

7.3 Other Rights

Without limiting any other rights of the Covenantee (whether under this Covenant, at common law, in equity or otherwise), the Covenantor acknowledges that the Covenantee may at any time seek an injunction, order for specific performance, declaration or other determination by a court to ensure the provisions of this Covenant are complied with.

8 Release and Indemnity

8.1 Release

The Covenantor irrevocably releases the Covenantee from, and waives, any claim, right, remedy, action, cause of action, loss, damage, expense or liability which the Covenantor may have against the Covenantee in respect of this Covenant or its performance or breach.

8.2 Indemnity

The Covenantor indemnifies and holds the Covenantee harmless from and against any claim, right, remedy, action, cause of action, loss (including, without limitation, loss of profit or indirect or consequential loss of any nature including economic loss), expense, or other liability incurred, suffered or asserted by the Covenantor or anyone else in connection with:

- (a) any use of, or activity upon the Covenant Area;
- (b) anything contained in this Covenant or the performance of the obligations imposed on the Covenantor under this Covenant; or
- (c) a failure to comply with one or more of the Covenantor's obligations under this Covenant by the Covenantor arising directly out of, or in connection, with an intentional act or omission, or negligent act or omission, of the Covenantor but the indemnity in this clause will be reduced proportionately to the extent that a negligent act or omission of the Covenantee contributed to the claim, action, expense, liability, costs, fines, penalties, losses or damages.

8.3 Compensation

Without limiting clause 8.2, the Covenantor waives all rights (if any) to recover any statutory or other compensation from the Covenantee in relation to the entering or Registration of this Covenant.

9 Dispute Resolution

9.1 Dispute Notice

If a dispute arises in connection with this Covenant or any Notice issued under it, the Covenantor or Covenantee may serve upon the other party a notice (**Notice of Dispute**) setting out the matter disputed and requiring the Covenantor and Covenantee in good faith to use their best endeavours to cooperate to resolve the dispute within a period of 20 Business Days (**Notice Period**) of the date of service of the Notice of Dispute.

9.2 Mediation

If the dispute cannot be cooperatively resolved in accordance with clause 9.1, the instigating party may serve upon the other party a notice (**Notice to Mediate**), specifying the dispute and requiring that the dispute be submitted to mediation.

9.3 Selection

If the Covenantor and Covenantee have not agreed upon a mediator and the mediator's remuneration within 20 Business Days after the Notice to Mediate, then:

- (a) the mediator and the mediator's remuneration shall be determined by the President of the Queensland Law Society, or the nominee of the President of the Queensland Law Society acting on the request of any party to the dispute; and
- (b) both the Covenantor and Covenantee agree to meet equally the cost of such mediation and appoint the mediator and the mediator's usual terms.

9.4 Other Processes

- (a) If the dispute is not resolved within 20 Business Days after the appointment of the mediator, either the Covenantor or Covenantee may institute legal proceedings to resolve the dispute.
- (b) This clause does not prevent the Covenantor and/or Covenantee from obtaining any injunctive declaratory or other interlocutory relief from a court, which may be urgently required.

10 No Obligations on Covenantee

The rights given to the Covenantee by this Covenant are permissive only and nothing in this Covenant imposes an obligation or duty on the Covenantee to perform any act or incur any expense for any purpose, whether connected with this Covenant or otherwise.

11 Registration

- (a) The Covenantor agrees to do everything necessary to assist the Covenantee in ensuring that this Covenant is Registered against the title to the Lot.
- (b) The Covenantor will attend to the lodgment for Registration of this Covenant and will notify the Covenantee within 10 Business Days of the Registration as to the Registration number and date of Registration of the Covenant.

12 Costs

- (a) Each party shall pay its own costs of and incidental to the negotiation, preparation and execution of this Covenant.
- (b) The Covenantor shall pay to the Covenantee on demand:
 - (i) any stamp duty and Registration fees payable on this Covenant or any amendment or variation of it; and
 - (ii) all costs incurred by the Covenantee in any enforcement of, or exercise of rights under, this Covenant.

13 Severability

If anything in this Covenant is unenforceable, illegal or void, then it is severed and the rest of this Covenant remains in force.

14 Notices

- (a) All notices required by this Covenant must be in writing.

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The Covenantee may serve a notice on the Covenantor by delivering, posting or faxing it to the Covenantor's business address last known to the Covenantee or, if the Covenantor is a company, to its registered office.

- (b) The Covenantor may serve a notice on the Covenantee by delivering, posting or faxing it to any address notified by the Covenantee to the Covenantor or, if the Covenantee is the Minister for Economic Development Queensland, the address available on its website from time to time.
- (c) Notices cannot be served by email. Any notice given by email will be invalid.
- (d) The following provisions apply in relation to service by post or facsimile:
 - (i) any notice sent by post must be sent by express post or registered mail;
 - (ii) any notice sent by post is conclusively deemed to have been given on the second Business Day after the date of posting;
 - (iii) any notice sent by facsimile is conclusively deemed to have been given upon completion of an apparently successful transmission; and
 - (iv) despite paragraph 14(d)(iii) in the case of a facsimile, if a notice is not sent on a Business Day or is sent after 4pm on a Business Day the same is deemed to have been given on the following Business Day.
- (e) Notices given in accordance with clause 140 to 14(b) will be treated as having been conclusively served.
- (f) Any notice by a party will be valid if it is signed on behalf of the party or by any director, secretary, attorney, authorised officer or by the party's solicitors.