

B E T W E E N :

GLENN ALEXANDER THOMPSON

-and-

CHERYL MAREE THOMPSON

Plaintiffs

-and-

WOODLEIGH HEIGHTS RESORT DEVELOPMENTS PTY. LTD.

-and-

WOODLEIGH HEIGHTS MARKETING PTY. LTD.

Defendants

TERMS OF SETTLEMENT

This action is settled upon the ^{completion of the} following terms:-

1. WITHIN 30 days of the date hereof (the P.S. & R. Settlement date) the Firstnamed Defendant shall obtain from P.S. & R. Nominees Pty. Ltd. ("P.S. & R.") the Discharge of mortgage number over the land described in Certificates of Title Volume 9171 Folio 700, 701 and 704 ("the P.S. & R. mortgaged land") and the release of the Guarantors obligations by paying the amount owing under the said Mortgage to P.S. & R. including principal, interest and all legal costs including the costs of P.S. & R. in action No. 1921 of 1985 in the Supreme Court of Victoria.
2. BEFORE the P.S. & R. settlement date:-
 - (a) The Plaintiffs shall in writing direct the Secondnamed Defendant to execute a Transfer in registrable form of the P.S. & R. mortgaged land to the Firstnamed Defendant.
 - (b) The Firstnamed Defendant shall prepare the Transfer referred to in (a) hereof and deliver it to the Secondnamed Defendant.
 - (c) The Secondnamed Defendant shall execute the Transfer delivered to it in accordance with (b) hereof.
3. ON the P.S. & R. settlement date, in exchange for the Discharge of the Mortgage referred to in Clause 1 hereof, the Secondnamed Defendant shall deliver the executed Transfer of the P.S. & R. mortgaged land to the Firstnamed Defendant and the Firstnamed

Defendant shall pay the legal costs and stamp duties of the other parties.

4. THE Firstnamed Defendant shall pay to the Plaintiff's Solicitors for and on behalf of the Plaintiff the sum of \$95,000.00 such sum to be paid as follows:-

- (i) By the release to the Plaintiffs' Solicitors of the sum of \$10,000.00 paid into Court by the Firstnamed Defendant pursuant to the Order of Master Evans made the 15th day of August 1984.
- (ii) By instalments of at least \$2,000.00 per week the first such instalment being paid on or before the 20th day of October 1985.
- (iii) The total sum of \$95,000.00 inclusive of the said sum of \$10,000.00 and the instalments aforesaid to be paid on or before the 18th day of December 1985, provided that the Firstnamed Defendant will at that date be entitled to withhold the sum of \$750.00 if the Plaintiffs have not paid such sum to Messrs. Palmer Stevens & Rennick Solicitors on account of costs of action taken by P.S. & R. Nominees Pty. Ltd. against the Plaintiffs and the Secondnamed Defendants for default under such Mortgage.

5. THE Firstnamed Defendant shall do all that is necessary on its part to procure from the Kyneton Shire Waterworks Trust and the Kyneton Sewerage Authority respectively or their successor in title, the Kyneton Water Board, consent whether by amendment of the agreements between the Firstnamed Defendant and the aforesaid Trust and Authority made the 1st day of January, 1982 respectively or by cancellation of such agreements and procurement of substitute agreements between the Firstnamed Defendant and the aforesaid Trust and Authority respectively or the Kyneton Water Board their successor

in title as are necessary to allow the land contained in and more particularly described in Certificates of Title Volume 9171 Folios 687, 688, 693, 696, 698, 700, 701, 704 and 713 ("the Plaintiff's allotments") the benefit of the supply of water and the conveyance of sewage as provided under the aforesaid agreements between the Firstnamed Defendant and the respective Trust and Authority provided that the cost of the future works required to provide water from the pipeline presently constructed pursuant to the aforesaid agreement or substitute agreement between the Firstnamed Defendant and the said Trust or its said successor to the allotments shall not be at the cost of the Firstnamed Defendant but at the cost of the person or persons requiring same whether it be the Plaintiffs or otherwise and provided further that the future works required for conveyance of sewage pursuant to the aforesaid agreement or substitute agreement between the Firstnamed Defendant and the said Authority or its successor from any of the allotments shall be not at the expense of the Firstnamed Defendant but at the expense of the person requiring same whether it be the Plaintiffs or otherwise.

6. IN the event that the Plaintiff's allotments fail to obtain the entitlement to the benefit of the supplier of water and the conveyance of sewage in accordance with paragraph 5 hereof then such failure shall be deemed a breach of these Terms on the part of the Firstnamed Defendant and the consequences set out in paragraph 8 shall follow.

7. THE Plaintiffs and the Defendant herein will on Monday 23rd September 1985 by their Counsel respectively consent to Orders being made herein as follows:-

- (i) That the Plaintiff's costs of this action including reserve costs up to and including the 20th day of September 1985 be taxed in default of agreement and be paid by the Defendants.

(ii) That the sum of \$10,000.00 paid into Court by the Firstnamed Defendant pursuant to the Order of Master Evans made the 15th day of August 1984 be paid to the Solicitor for the Plaintiffs for and on behalf of the Plaintiffs.

(iii) That the action be otherwise adjourned sine die, pending completion of these Terms of Settlement between the parties a copy of which by Order of the Court are to be lodged upon the Court file and the Plaintiffs undertake upon completion of the Terms of Settlement to file a Notice of Discontinuance, the reasonable costs of which shall be paid by the Firstnamed Defendant to the Plaintiff's Solicitors and the Defendants undertake not to seek costs on such discontinuance.

(iv) That liberty be reserved to apply for the purpose of further listing of this action upon seven days notice in writing being given by the party requiring same.

8. IN the event that the Defendant fail to carry out all of the acts required as aforesaid the Plaintiffs will be at liberty to apply to the Supreme Court or Judge thereof for the further listing of the action against the Defendants, move for judgment in accordance with the Statement of Claim herein for specific performance of the Contracts as herein alleged save with respect to such of the Plaintiff's allotments referred to paragraph 1 to 3 hereof as may already have been transferred pursuant to these Terms of Settlement, and for damages to be assessed by a Master of the Supreme Court together with costs of and incidental to such Application for further listing and judgment and the Defendants will consent to such further

listing and to the pronouncement and entry of such judgment and in that event the mere production of these Terms of Settlement shall be conclusive evidence of the Defendant's irrevocable consent as aforesaid, provided that the Plaintiffs shall allow a credit to the Defendants in the assessment of damages as aforesaid any sum paid by the Defendants or either of them pursuant to these Terms of Settlement.

9. THE Firstnamed Defendant warrants that the electricity is available to Cluster Subdivision No. 1134 or although not presently connected to all allotments thereon, including the Plaintiff's allotments and it undertakes that it will not obstruct or otherwise interfere with the Plaintiff's allotments right of access to such electricity supplied and that it will do all that is reasonably necessary, if anything, on its part to enable the Plaintiff's allotments, if and when required by the Plaintiffs or their successors in title to be connected to the electricity supply, provided that such action on the part of the Firstnamed Defendant shall not be at the cost of the Firstnamed Defendant but at the cost of the person or persons requiring same and provided further that all such supply of electricity shall be by underground means unless the Body Corporate votes that the supply should be by means otherwise.

10. THE Plaintiffs warrant that the land contained in Certificates of Title Volume 9171 Folios 700, 701 and 704 is not encumbered otherwise than by the aforesaid Mortgage to P.S. & R. Nominees Pty. Ltd. and agree that they will not otherwise encumber such Certificates of Title.

11. SAVE as aforesaid the parties hereto forever release and discharge the others from any actions, claims, suits or demands that they or any of them have or may have had arising out of the action herein.

DATED the 20th day of September 1985.

SIGNED by the said GLENN ALEXANDER THOMPSON in the presence of:

John C. Lewis

Glenn Alexander Thompson

SIGNED by the said CHERYL MAREE THOMPSON in the presence of:

John C. Lewis

Cheryl Maree Thompson

THE COMMON SEAL of WOODLEIGH HEIGHTS RESORT DEVELOPMENTS PTY. LTD. was hereunto affixed in accordance with its Articles of Association in the presence of:

[Signature] Director

Duan B. Murphy Secretary



THE COMMON SEAL of WOODLEIGH HEIGHTS MARKETING PTY. LTD. was hereunto affixed in accordance with its Articles of Association in the presence of:

A.P. Willmott Director

A. Willmott Secretary

