



# RENOVATION AGREEMENT

This Agreement is between, Fix Sell Pay Pty Ltd ACN 165 833 438 of 11/214 Bay Street, Brighton, Victoria 3186 ("FSP")

AND OWNERS NAME of OWNERS ADDRESS ("the Owner")

Date: \_\_\_/\_\_\_/2018  
Property Address: OWNERS ADDRESS ("the Property")  
Price: \$ ("the Price")  
Commencement: TBA ("the Commencement")  
Quote Number: ("the Quote Number")

Signed as an Agreement, Signed, Sealed and Delivered by:

By FSP in accordance with section 127 )  
of the Corporations Act 2001 by the )  
persons authorised to sign for the )

Director: T.Yaeger )  
Address: 11/214 Bay Street, Brighton, )  
Victoria 3186 )

\_\_\_\_\_  
Director

By the Owner in the presence of: )

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Witness )

\_\_\_\_\_  
Print Owner Name

\_\_\_\_\_  
Print Witness Name )

## RECITALS

- A. The Owner is the registered proprietor of the Property.
- B. FSP is in the business of property renovations where FSP enters into agreements with clients to renovate and prepare the client's property for sale. Once the Property is sold, payment is made to FSP for its services from the proceeds of sale unless otherwise stated.
- C. The Owner is desirous to sell the Property and has offered to FSP to renovate and prepare the Property for sale.
- D. FSP has accepted the Owner's offer to renovate and prepare the Property for sale in accordance with the terms of this Agreement.

## OPERATIVE PART

### 1. Interpretation

This agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this agreement:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or agreements also mean those documents or agreements as changed, novated or replaced, and words denoting one gender include all genders;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Victoria;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;

- (g) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (h) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

## **2. Commencement**

- (a) The engagement of FSP commences on the commencement date and continues until terminated in accordance with this agreement.
- (b) Time is of the essence of this Agreement.

## **3. Services and scope of works**

- (a) The Owner and FSP enter into this Agreement on the terms set out in this Agreement for the provision of services by FSP to the Owner as described in a quote provided by FSP to the Owner so referenced by the Quote Number ("the Services").
- (b) FSP shall provide the Services to the reasonable satisfaction of the Owner which may be varied by mutual agreement.

## **4. Payment**

- (a) Payment for the Services by the Owner to FSP shall be in the amount as specified in the final invoice including any variations or additional works if added of FSP ("the Payment").
- (b) Payment is due to FSP on the earlier of the following occurring:
  - (i) The deposit being released following sale of the Property together with any interest if applicable; or
  - (ii) The settlement of sale of the sale of the Property; or
  - (iii) The expiration of 8 months from the date of this Agreement.
- (c) If the client selects the option as per Fix Sell Pay's Clauses of Work document, to pay on completion of the work – consisting of progressive payments, the following procedures must be followed:
  - (i) Payment is required in three equal instalments; the first prior to works commencing (one third of the invoice), the second throughout the progression of works (the second third of the

invoice) and the final payment required following the completion of works (final third and any variations).

- (ii) Payments are to be made within 7 days of receiving the invoice
- (iii) A 10% discount is applied to the quoted price. This discount is only valid if payments are received within 7 days. This discount is not applicable to variations if they occur throughout the progression of works.

(d) Interest commences to accrue on the Payment after 5 months from the date of this Agreement, or immediately upon an event referred to in clause 4(g), on any unpaid amounts at the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 plus 5%. Such interest is to be paid by the Owner to FSP on a weekly basis until the Payment is made in full.

(e) Whereby the rate of interest payable by the Owner on any unpaid amount of the Payment pursuant to clause 4(d) is expressed as a "per annum" rate, this rate shall be varied to a "per quarter" rate after 7 months from the date of this Agreement payable by the Owner should any amounts of the Payment remain unpaid;

(f) In the event the Owner does not comply with weekly payments of interest as per clause 4(d) herein, interest will commence to accrue at the rate as prescribed in clause 4(d) and 4(e) plus 10% from the date of breach of clause 4(d) until the Payment is received in full.

(g) The Owner represents and warrants that the following events shall trigger the Payment immediately and interest will commence to accrue in accordance with clause 4(d):

(i) The Owner fails or neglects to list the Property on the market for sale by private treaty or auction with a selling agent within 20 business days (or such other time as expressly agreed in writing) of completion of the services by FSP;

(ii) The Owner removing or withdrawing the Property from the market for sale;

(iii) In the event the mortgagee comes into possession of or provides notice of taking possession or recovery action against the Owner in relation to the Property;

- (iv) The Owner becoming aware of bankruptcy proceedings being commenced against the Owner or the Owner being made Bankrupt which comes earlier;
- (v) Upon the Owner breaching a material term of this agreement.

## **5. Owner's Representations and Warranties**

The Owner represents and warrants that:

- (a) The Owner is the registered proprietor of the Property and has full authority to enter into this Agreement.
- (b) The Property has sufficient equity available to make the Payment for the Services.
- (c) Until the sale of the Property, the Owner shall continue to pay all regular instalments in respect of the mortgage, council rates and water rates in respect of the Property as they fall due.
- (d) They are not an undischarged Bankrupt.
- (e) The Owner irrevocably consents FSP to conduct:
  - (i) A credit check of the Owner at the Owner's expense; and
  - (ii) A title search of the Property at the Owner's expense.
- (f) The Owner warrants that there are no outstanding building notices or any unforeseen reasons as to why FSP shouldn't enter into this agreement to carry out the works disclosed in their quote. Full disclosure is required.

## **6. Owner's Covenants**

The Owner covenants as follows:

- (a) Immediately upon signing this Agreement, the Owner shall provide FSP with the following:
  - (i) A current rates notice;
  - (ii) A current mortgage statement;
  - (iii) Proof of identity documents with a minimum requirement being a valid driver's licence or valid passport.
- (b) To take all necessary steps and execute all necessary documents to cause the Property to be sold by private treaty or auction within 20 business days (or such other time as expressly agreed in writing) upon completion of the Services by FSP.

- (c) Contemporaneously with the sale, the Owner will do all things and sign all documents to ensure that the Payment is received by FSP from the proceeds of sale at the settlement of the sale of the Property.
- (d) To accept any reasonable offer to sell the Property in the opinion of FSP, acting reasonably.
- (e) To accept any reasonable offer to sell the Property which must sufficiently discharge all mortgages and caveats enabling the Owner to deliver good title at settlement.
- (f) Not to assign, sell or mortgage the Property without the express written consent of FSP for the duration of this Agreement.
- (g) To inform FSP of all offers made to purchase the Property within 5 business days of the offer being known to the Owner.
- (h) In the event the Property fails to be sold by private treaty or auction within a period of 2 months as per (a) above, the Owner then has the remainder of the 8 months to settle their outstanding account or it can be settled immediately.
  - (i) as soon as possible take all necessary steps and execute all necessary documents to cause the Property to be sold by auction at the earliest possible date at a reserve to be agreed upon between the Owner and FSP, acting reasonably, and failing such agreement to be determined by the proper officer of the Real Estate Institute or their nominee;
  - (ii) upon sale by auction, the Owner will do all things and sign all documents to ensure that the Payment is received by FSP from the proceeds of sale at the settlement of the sale of the Property;
  - (iii) To allow FSP to register a security on the Personal Properties Security Register with respect to the Services and/or the FSP Materials and the Owner further covenants to do all such acts to allow FSP to facilitate registration.

## **7. Indemnity**

The Owner indemnifies and agrees to keep FSP indemnified against all claims, proceedings, actions, judgments, suits, demands and other proceedings made or brought against FSP against all damage, loss, cost, expense or liability

which but for this indemnity FSP may suffer or may incur arising directly or indirectly from this Agreement.

## 8. Charge and Caveat

- (a) The Owner hereby charges all of the Owner's interest in the Property to FSP and authorises FSP to lodge a caveat on the Property as security for the Payment, interests and all costs.
- (b) The Owner further also charges in FSP favour all estate and interest in any land and in any other assets whether tangible or intangible in which the Owner now has any legal or beneficial interest or in which the Owner later acquires any such interest, with payment of all monies owed by the Owner to FSP. The Owner irrevocably consents to a caveat being lodged in respect to this charge.
- (c) The caveat as per 8 (a) and (b) shall be lodged by FSP at the expense of the Owner.
- (d) FSP shall do all things reasonably necessary to remove the caveat as per this clause (8) provided that evidence is provided to the reasonable satisfaction of FSP as soon as possible that a bank cheque shall be drawn at settlement in the favour of FSP for the Payment.

## 9. Domestic Building Works (all works)

- (a) The Owner shall enter into a Domestic Building Contract with Comres Constructions Pty Ltd (ACN: 135 470 316) ("**Comres Constructions**") for all Building Works that require a Building Permit.
- (b) Comres Constructions will carry out all Building Works and shall be responsible for obtaining all required permits and insurances upon the Owner entering into a Domestic Building Contract with the Owner.  
*[Pursuant to the Building Act 1993, a policy of Domestic Building Insurance is provided by a builder when the cost of building work under the contract with the builder is more than \$16,000.00 (including labour and material costs). If a property owner sells their house within six years of completion of such building work, Domestic Building Insurance, whether provided by an owner-builder or a registered building practitioner, will continue to apply to the successor in title for the period of cover.]*

*Please Note: Under the Building Act 1993, Building Work valued more than \$16,000.00 (previously (\$12,000) will require Domestic Building Insurance and will cover a maximum of \$300,000 all-inclusive of costs and expenses commencing from the earlier of the date of the Domestic Building Contract or date of Building Permit for the domestic building work and conclude 6 years from completion of the domestic building work for structural defects and 2 years from completion of the domestic building work for non-structural defects. Cover is only provided if the Builder has died, becomes insolvent or has disappeared or fails to comply with a Tribunal or Court Order.”).*

- (c) The Owner will be required to enter into a domestic building contract with Comres Constructions to facilitate any domestic building works as per this clause 9 and the Owner shall be liable for all costs incurred by it in relation to the Domestic Building Works carried out by Comres Constructions.
- (d) For the avoidance of doubt this Agreement is not itself a Domestic Building Contract as defined in the Domestic Building Contracts Act 1995.

#### **10. FSP Supplied Material**

- (a) Any décor, furniture, ornaments, materials, fixtures, fittings (“**FSP Materials**”) of whatsoever nature placed in the Property by FSP for the purposes of preparing the Property for sale shall remain the absolute property of FSP.
- (b) In the event of any damage to the FSP Materials:
  - (i) the Owner shall be liable for the costs of repairs or replacement;
  - (ii) such costs shall form part of the Payment to be made by the Owner to FSP at settlement.
- (c) All title, rights and ownership in the FSP Materials remains the sole property of FSP unless the Owner wishes to offer to purchase the FSP Materials which FSP at its sole discretion may decide to accept or reject and if accepted, the costs of the FSP Materials shall form part of the Payment and paid according to this Agreement.



## **11. Retention of Title**

- (a) All title, rights and ownership in any works carried out by FSP as per the Services under this agreement and the FSP Material remain the exclusive property of FSP until Payment has been received in full by FSP and in the case of the FSP Material, in accordance with clause 10 (c).
- (b) In default of Payment, the Owner irrevocably authorises FSP, its servants and agents or any person authorised by FSP to enter the Property to remove the works and the FSP Material.
- (c) The Owner further agrees to indemnify and hold FSP harmless from all reasonable costs and expenses of recovery and losses if any on their sale.

## **12. Entire agreement**

This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this agreement.

## **13. Amendment**

An amendment or variation to this agreement is not effective unless it is in writing and signed by all the parties. This does not include the price, which can alter if the owner requests additional works, variations, or if the owner chooses not to go ahead with items listed on the quote.

## **14. Dispute resolution**

If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause:

### **(a) Notification**

The complainant must inform the respondent in writing of the following:

- (i) The nature of the dispute;
- (ii) The outcome the complainant desires, and

(iii) The action the complainant believes will settle the dispute.

(b) **Endeavour to resolve dispute**

On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(c) **Right to terminate**

If the dispute has not been resolved after 21 days from commencement of negotiation, either party may commence court proceedings.

(d) This clause survives termination of this agreement.

**15. Waiver and amendments**

Any waiver by any party to a breach of this agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

**16. Events beyond control**

Neither party shall be liable to the other party for any loss caused by any failure to observe the terms and conditions of this agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

**17. Validity**

If any part of this agreement is to any extent invalid, illegal or unenforceable in a court of law, the remaining terms of this agreement will not be affected and will remain in full force.

**18. Severance**

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

**19. Notices**

A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

**20. Counterparts**

This agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last party.

**21. Independent Legal Advice**

Each party acknowledges that they have been provided the opportunity to seek independent legal advice in relation to this Agreement and they are fully aware of the effect of signing this Agreement.

**22. Costs**

- (a) Each party will bear their own legal costs incurred with the preparation of this Agreement;
- (b) The Owner agrees to be solely responsible for the conveyancing costs incurred in the sale of the Property conducted in accordance with this Agreement.