

EXCLUSIVE SELLING AGENCY AUTHORITY (Residential)

Key 10

(Note: Where there is insufficient space in any Item place details in an Annexure and refer to the Annexure in the Item - e.g. 'Refer Additional Expenses Annexure')

Item**Item Schedule****1. VENDOR**Name/s: **Graham Laity and Anthea Carr**

Business Name:

Address: **88/131 NEPEAN HWY, DROMANA 3936**

ABN:

Phone: **0407 548 331**

Mobile:

Email: **VILLAGEBIRDMAN@YAHOO.COM.AU**GST Registered: **Yes / No****2. AGENT**

Clause 1.1(2)

Name/s: **McMillan Trust T/as Roger McMillan Real Estate**Address: **211B Point Nepean Road, Dromana VIC 3936**

ABN:

Phone:

Mobile:

Contact: **Roger McMillan**Email: **roger@rogermcmillan.com.au**

Licence No.:

3. PROPERTY (Includes land and all improvements)

Clause 1.1(11)

3.1 Address: **108/131 Nepean Hwy Dromana**Real Property Description: **2 bedrom cabin, 1 bathroom**

3.2 Included Fittings / Furnishings / Chattels:

Fixtures and Fittings as inspected. Furniture, fridge etc.3.3 Property is Sold: **Subject To Tenancy / With Vacant Possession****4. VENDOR'S SALE PRICE AND SETTLEMENT**

Clause 5.4

*Note: Vendor should obtain independent advice as to Sale Price*Vendor's Sale Price: \$ **230,000** **GST Exempt / GST-Inclusive**Vendor's Preferred Settlement Date: **30,60 days** days from date of Contract**5. AGENT'S ESTIMATE OF SELLING PRICE (Section 47A of the Estate Agents Act 1980)**

Clause 10

*Note: This amount is an estimate not a valuation. The GST status of any estimate is as indicated in Item 4.**Note: If a price range is specified, the difference between the upper and lower amounts cannot be more than 10% of the lower amount.*Single amount: \$ **220,000** **OR** Between: \$ and \$**6. TERM OF EXCLUSIVE AUTHORITY (SOLE AGENCY)**

Clauses 3 and 7.1(1)

6.1 This Exclusive Authority will be for a period of **90** days from the date of signing this Authority.6.2 *Note: Section 54 (1) of the Estate Agents Act 1980*

If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends:

(a) in the case of a sale by auction, 30 days after the date of the auction; or

(b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the vendor of the real estate or business.

7. ONGOING AUTHORITY PERIOD

Clauses 3.3 and 7.1(2)

At the end of the term of the Exclusive Authority (Item 6), unless terminated, this Authority will continue as an ongoing authority for a period of **30** days (ongoing authority period).*Note: Where no days are inserted, the period shall be 1 Business Day.***8. SPECIAL INSTRUCTIONS**

8.1

8. SPECIAL INSTRUCTIONS (Continued)

8.2 The Agent is authorised to advertise the Property for the following price or price range:

Single amount: \$ ~~225,000~~ OR Between: \$ 210,000 and \$ 230,000

9. COMMISSION (s49A(1)(c) Estate Agents Act 1980)

Clause 7

The Agent's Commission will be calculated using one of the Commission Methods set out in Item 9.2:

9.1 Estimated Sale Price: \$ 225,000 Excluding GST

9.2 Commission Method: (tick only one)

- ☐ % (incl. GST) of the Sale Price
- ☐ % (incl. GST) of the first \$ _____ of the Sale Price plus _____ % (incl. GST) of the Balance
- ☒ Fixed Amount of \$ 11,000.00 (incl. GST)
- ☐ Other: _____

9.3 Commission Amount:

\$ 10,000.00 plus GST of \$ 1,000.00 Total Payable: \$ 11,000.00 (incl. GST)

Note: Where the Commission Method is expressed as a percentage (Item 9.2) the Commission Amount (Item 9.3) is an estimated amount calculated on the Estimated Sale Price (Item 9.1) and the actual commission for this service will be worked out only on the actual sale price.

10. EXPENSES (If insufficient space attach schedule)

Clauses 7.7 and 7.9

The Vendor shall reimburse the Agent for the following authorised Expenses incurred during the term of this Authority:

Expense	Amount (Include GST)	*Due and Payable
Advertising		
TBA		

* When Due and Payable is left blank, Expenses are payable on receipt by the Vendor of an itemised invoice.
[Note: Payment is not dependent upon a sale taking place]

11. COMMISSION SHARING

Clause 7.11

Will the Agent's commission be shared with other people (other than a licensed estate agent or an agent's representative either of whom are employed by the agent, or a licensed agent who is in partnership with the agent)?

☐ Yes ☒ No (Important - if "Yes", see Clause 2.1(8))

12. MAKING A COMPLAINT CONCERNING COMMISSIONS AND/OR OUTGOINGS

(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)

Any complaint relating to commission or outgoings can be made to the Director, Consumer Affairs Victoria, GPO Box 4567, Melbourne VIC 3001 or by telephoning 1300 73 70 30.

Unless there are exceptional circumstances, Consumer Affairs Victoria cannot deal with any dispute concerning commission or outgoings unless it is given notice of the dispute within 28 days of the client receiving an account for, or notice that the agent has taken the amount in dispute, whichever is later.

13. SPECIAL CONDITIONS

Clause 12

Special Conditions to this Authority where inserted at the direction of the Vendor were prepared by the Vendor or an Australian Legal Practitioner instructed by the Vendor and not by the Agent. No warranty is given by the Agent with respect to such clauses. Legal advice should be sought.

WALK IN WALK OUT BASIS.

14. REBATE STATEMENT

(this statement must be incorporated within the Authority in the approved form - s49A(1)(c) Estate Agents Act 1980)

Important information for Vendor(s)

A rebate includes any discount, commission, or other benefit, and includes non-monetary benefits. It is illegal for an Agent to keep any rebate they receive for advertising or other outgoings purchased by the Agent on your behalf. Section 48A of the *Estate Agents Act 1980* requires the Agent to immediately pay you any rebate they receive in relation to the sale of your property.

The Agent is not entitled to retain any rebate and must not charge you an amount for any expenses that is more than the cost of those expenses.

☒ The Agent will not be, or is not likely to be, entitled to any rebates.

OR

☐ The Agent will be, or is likely to be, entitled to rebates.

List of rebates:

- any outgoings; or
- any pre-payments made by the person engaging or appointing the Agent (the Client) in respect of any intended expenditure by the Agent on the Client's behalf; or
- any payments made by the Client to another person in respect of the work.

Goods/Services to which rebate relates	Name of person or organisation providing rebate	Amount (including GST) (if amount not known, provide an estimate)

15. AUTHORITY TO RECEIVE NOTICE

The Agent is authorised to receive notice of termination in accordance with section 31 of the *Sale of Land Act 1962*.

☐ Yes ☐ No

16. CAPITAL GAINS WITHHOLDING PAYMENT (To be completed by the Vendor)

Note: For properties with a market value of, at or more than, \$750,000 a buyer must withhold 12.5% of the purchase price and pay such monies to the Australian Taxation Office (ATO) on or before settlement, unless:

- the Vendor has obtained a Clearance Certificate from the ATO (*Taxation Administration Act 1953 (Cth)* - Subdivision 14-D) and provides it to the buyer in a timely manner prior to settlement; or
- the Vendor is a mortgagee exercising power of sale and the residue payable to the mortgagee after payment of sale costs and mortgage debt is not more than zero and the mortgagee provides a written declaration to that effect to the buyer in a timely manner prior to settlement.

(1) Does the Vendor have a Clearance Certificate? ☐ Yes ☐ No ☒ N/A

(2) If 'No' above has the Vendor applied? ☐ Yes on ☐ No

17. GST WITHHOLDING

All sales of 'residential property' will require the Vendor to complete a notice in accordance with section 14-255 of the *Taxation Administration Act 1953 (Cth)*.

18. SIGNATURES

By signing below the parties acknowledge and confirm having read and understood this Authority.

Signatures of Vendor(s):**Date:****Date:**12 / 11 / 2021/ /12 / 11 / 2021/ /

Note: Where signed by Vendor's authorised representative or the Vendor is a corporation evidence of authority to sign must be provided.

Signature of Agent:**Date:**12 / 11 / 2021

Terms of Authority

1. Definitions

1.1 In this Authority, which includes the Item Schedule, the following terms mean:

- (1) **Act:** the *Estate Agents Act 1980* as amended.
- (2) **Agent:** means the Agent set out in Item 2 together with the Agent's representative as defined by the Act.
- (3) **Authority:** this Exclusive Selling Agency Authority consisting of the Item Schedule, Terms of Authority and any additional schedules that may be attached.
- (4) **Data Collection Agency:** means an agency or organisation that collects real estate data to provide information to the real estate, finance and property valuation industries to enable data analysis.
- (5) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Victoria) Act 2000* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (6) **Expenses:** any cost or charge incurred by the Agent (including in respect of advertising or marketing) in carrying out the Agent's obligations under this Authority.
- (7) **GST:** where used in this Authority, has the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (8) **GST Act:** refers to the *A New Tax System (Goods and Services Tax) Act 1999*.
- (9) **Item:** an Item in the Item Schedule forming part of this Authority.
- (10) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (11) **Property:** the Property as described in Item 3.
- (12) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (13) **Relevant and Material Facts:** facts relating to the Vendor's obligations and authority as detailed in Clause 5, including but without limitation, property ownership, rental agreements, safety and condition of the Property and fittings and compliance with relevant Government legislation.

1.2 Other words and phrases not defined in this Authority will, where applicable, take on those meanings given to them in the Act.

2. Vendor's Confirmation

2.1 By signing this Authority the Vendor(s) warrants and confirms:

- (1) it is the owner of the Property;
- (2) it has authority to enter into this Authority;
- (3) the Property is not subject to any binding sale contract at the time of entering into this Authority;
- (4) that, in accordance with s 49A(1)(b) of the *Estate Agents Act 1980*, prior to signing this Authority the Vendor was advised by the Agent that Expenses and Commission were subject to negotiation;
- (5) having received at the time of signing a signed copy of this Authority;
- (6) having had the opportunity to obtain legal and other professional advice with respect to this Authority;

(7) that, prior to signing, the Vendor's attention has been drawn to Item 11 *Commission Sharing*, Item 12 *Making a Complaint Concerning Commission and/or Outgoings*, Item 14 *Rebate Statement* and Clause 13 *Dispute Resolution*; and

(8) where commission sharing is applicable as indicated in Item 11 the Vendor acknowledges, prior to signing this Authority, having received a notice of commission sharing in accordance with section 48 of the *Estate Agents Act 1980*.

2.2 Where the Vendor is a proprietary company the Agent may require the directors of such company to provide personal guarantees guaranteeing the company's performance under this Authority.

3. Agency and Authority

3.1 Exclusive Authority

The Vendor by this Authority appoints the Agent as Exclusive Selling (Sole) Agent for the term of this Authority as set out in Item 6 or any extension to the exclusive authority period and will refer any prospective buyers of which the Vendor becomes aware to the Agent. Authority vested in the Agent by this Authority shall be deemed to be vested in the Agent's authorised employees.

3.2 The Agent agrees to such appointment.

3.3 Ongoing Authority

Either party may terminate this Authority during the ongoing authority period at any time on the giving of not less than 14 days written notice. Such termination will be without prejudice to either party's existing rights, duties or obligations.

4. Agent's Selling Obligations and Authority

4.1 (1) The Agent will market the Property, as instructed by the Vendor in accordance with this Exclusive Selling Authority.

(2) The Agent is authorised to advertise the Property for sale, in accordance with the Vendor's instructions, at the Vendor's Sale Price (Item 4) or such other price as the Vendor may from time to time instruct in writing.

4.2 The Agent will take reasonable steps to ensure goods and services obtained for the Vendor are at competitive prices.

4.3 The Agent is authorised to liaise with and provide instructions to the Vendor's solicitor or conveyancer with respect to the preparation, completion and exchange of the Section 32 statement (in accordance with the *Sale of Land Act 1962*) and Contract of Sale.

4.4 The Agent is authorised under this Authority, in accordance with Section 53A of the Act, to fill out a standard form contract, or a contract prepared by an Australian Legal Practitioner (for example, the ADL Contract of Sale of Real Estate).

4.5 (1) The Agent must provide financial statements and account to the Vendor with respect to all monies received, paid or used by the Agent, carrying out the Agent's obligations under this Authority.

(2) The Agent will issue tax invoices, when necessary or required by the Vendor, in respect of all monies owing by the Vendor to the Agent.

4.6 The Agent's authority does not extend beyond the terms of this Authority and the Agent will not be required to provide services not authorised by this Authority.

4.7 Where authorised in writing to do so by the Vendor, the Agent may sign the Contract where the terms have been agreed to by the Vendor.

4.8 Any services provided will be appropriate and carried out with all reasonable due care and skill.

5. Vendor's Obligations and Authority

5.1 The Vendor has at the time of entering into this Authority:

- (1) disclosed to the Agent all relevant and material facts;
- (2) made no statement with respect to the land which the Vendor knows or has reason to believe may be misleading or deceptive (Section 12 of the *Sale of Land Act 1962*); and
- (3) provided all information relevant to Section 32 of the *Sale of Land Act 1962*.

5.2 The Vendor will at all times during the currency of this Authority keep the Agent advised of and disclose to the Agent in writing details, reasonably known to the Vendor, of any defects or want of repair to the Property likely to result in or cause injury to persons occupying, entering upon or using the Property.

5.3 The Vendor acknowledges, for the purposes of Clause 5.1, having been advised by the Agent of its obligations with respect to the relevant sections of the *Sale of Land Act 1962*, in particular Sections 12 and 32.

5.4 Where the Vendor has nominated a Vendor's Sale Price in Item 4 the Vendor must consider offers to buy at that price.

5.5 Where a product, fixture or fitting provided with the Property has a warning label or safety instructions attached the Vendor is not to deface, damage or remove such label.

5.6 The Vendor will, where applicable, make available to the Agent, any current Certificate of Swimming Pool Barrier Compliance issued prior to or during the term of this Authority.

6. Indemnity

The Agent having complied with its obligations under this Authority and not having been negligent, the Vendor indemnifies the Agent, its officers and employees, from and against all actions, claims, demands, losses, costs, damages and expenses which the Agent may suffer or incur in respect of:

- (1) the Vendor's failure (without fault on the part of the Agent) to comply with this Authority; or
- (2) the Vendor's failure to give the Agent appropriate authority or instruction, or sufficient funds to carry out an instruction or authority; or
- (3) in accordance with the terms and conditions of this Authority, the Agent acting on behalf of the Vendor under this Authority; or
- (4) a warning label or safety instructions having been removed, damaged or defaced where a product or fitting has been supplied to the Property with such a label or instruction attached.

7. Commissions, Fees and Expenses

7.1 The Vendor acknowledges the Agent is entitled to the Commission if:

- (1) during the initial or any extended exclusive authority period (Item 6), the Property is sold; or
- (2) during the ongoing authority period (Item 7) the Property is sold and the Agent is the effective cause of sale; or
- (3) during the initial or extended or ongoing authority period a signed offer is provided by the Agent to the Vendor which is in the form of a contract enforceable if signed by the Vendor and exchanged with the Buyer, at a price that is not less than the Vendor's Sale Price (Item 4) and otherwise in accordance with this Authority; or

(4) within 120 days after the conclusion of the exclusive authority period, the Property is sold to a Buyer introduced by the Agent during the exclusive authority period and the Agent is the effective cause of the sale; or

(5) a binding sale contract is entered into pursuant to or in accordance with Clauses 7.1(1), 7.1(2) or 7.1(4) and not completed due to:

- (a) cancellation by mutual consent.
- (b) the default of the Vendor.
- (c) repudiation by the Vendor.
- (d) breach of warranty by the Vendor resulting in termination of the Contract by the Buyer.

7.2 The Agent will be entitled to the Commission if the Property is sold during the exclusive authority period irrespective of whether the Property is sold by the Agent, Vendor or another person.

7.3 The Commission will be calculated on the actual price the Property is sold for (Selling Price) notwithstanding such Selling Price may be greater or less than the Vendor's Sale Price set out in Item 4.

7.4 The Commission, as detailed in Item 9, will be payable by the Vendor on settlement of the sale or within 7 days of the Vendor's default in Clause 7.1(5).

7.5 The Vendor authorises and directs the Commission, fees and Expenses (including taxes and GST if applicable) to be paid to the Agent by the person (including the Agent) holding the deposit or other monies due under the contract for the sale of the Property. The Authority shall be sufficient authority and discharge for such payment.

7.6 The Agent will not be entitled to the Commission (Item 9) if after the termination or conclusion of this Authority the Vendor has signed an Exclusive Authority with another Agent.

7.7 The Vendor will pay all Commissions, fees, charges, Expenses and other outlays owing to or incurred by the Agent in association with this Authority (including any taxes or deductions debited by financial institutions against the Agent's account and attributable to the affairs of the Vendor), as detailed in Items 9 and 10.

7.8 This Authority cannot be varied without agreement in writing signed by the parties.

7.9 Unless otherwise stated, all prices of Goods and Services under this Authority include (where applicable) GST.

7.10 If the Agent is entitled to an input tax credit on any payment or expense the Vendor will reimburse such payment or expense to the Agent at its GST free value unless payment by the Vendor to the Agent amounts to a taxable supply as defined in the GST Act in which case the Vendor will pay the payment or expense plus GST.

7.11 The Vendor acknowledges the Agent may, during the term of the Authority, to better facilitate the provisions of the Authority, utilise the services of another Agent in which case there may be commission sharing and upon the Vendor granting consent to commission sharing, which consent will not be unreasonably withheld, the Vendor will complete a new Authority making such provision, but otherwise on the same terms as this Authority (unless amendment is agreed to) including completion of Item 11 to enable such commission sharing for the balance term of this Authority.

7.12 The parties agree the Property is sold, or a sale obtained, when a binding contract, which is obtained in compliance with this Authority for the sale of this Property becomes unconditional.

- 7.13 The parties agree a Buyer will have been introduced to a property where the Agent has been a source of information with respect to bringing to the attention of a Buyer that such property is available for purchase.
- 8. Interest on Overdue Monies**
Any monies payable under this Authority by the Vendor to the Agent (or any judgment given in respect of this Authority) not paid when due will attract Interest from the due date for payment, to the date of payment at the rate prescribed by the Attorney General in accordance with the *Penalty Interest Rates Act 1983*.
- 9. Financial and Investment Advice**
9.1 The Agent makes no representation as to being a financial or investment advisor.
9.2 The Vendor acknowledges any financial and investment advice provided by the Agent is general advice and its preparation has not taken into account the individual circumstances of the person or the person's objectives, financial situation or needs.
9.3 An intending buyer should assess the suitability of any investment in the Property in the light of the buyer's own needs and circumstances, which the buyer can do personally or by consulting an appropriately licensed financial adviser.
9.4 If there is any conflict of interest the Agent may have in connection with the provision of the advice referred to above the Agent must disclose full details of any benefits that may accrue to the Agent as a result thereof.
- 10. Agent's Opinion**
10.1 In respect of the Agent's Estimate of Selling Price or Estimate of Selling Price Range (ESP) (Item 5) it is:
(1) applicable as at the date of this Authority; and
(2) the Agent's honest and fair opinion.
10.2 Nothing in this section requires the ESP and the Vendor's Sale Price (Item 4) to be the same amount.
10.3 The parties agree this Authority will be amended in respect to Item 5 by the Agent notifying the Vendor in accordance with section 47AE of the Act of a Revised Estimate of Selling Price.
10.4 An Agent making a false representation as to the ESP commits an offense under the Act in which case penalties apply.
- 11. Buyer's Default**
In the case of default by the Buyer in not completing the purchase the Vendor will pay the Agent's Commissions, fees and Expenses and to do so may utilize any forfeited or recovered deposit monies. Should any balance Commissions, fees and Expenses remain unpaid thereafter, the Vendor shall pay same in accordance with this Authority.
- 12. Special Conditions**
Any Special Conditions to this Authority shall form part of this Authority. Should there be inconsistency between the terms of this Authority and a Special Condition, the Special Condition shall apply.
- 13. Dispute Resolution**
In compliance with the *Estate Agents (Professional Conduct) Regulations 2018* the Agent has in place procedures for resolving complaints and disputes arising from the operation of the Agent's estate agency practice. If a complaint is made the Agent will advise the dispute resolving procedures. The Agent will make every effort to minimize or resolve disputes relating to the Agent's performance.
- 14. Privacy**
14.1 The Agent must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.
14.2 The Privacy Policy outlines how the Agent collects and uses Personal Information provided by you as the Vendor, or obtained by other means, to provide the services required by you or on your behalf.
14.3 You as Vendor agree the Agent may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to:
(1) potential buyers, to the extent required to prepare a contract for the sale of the Property; and/or
(2) Owners Corporations and financial institutions; and/or
(3) other third parties as may be required by the Agent for the purposes of marketing, sales promotion and administration relating to the use of the Agent's products and services, but must do so in compliance with legislative and regulatory requirements.
14.4 Documents or copies of documents provided to establish the identity of the Vendor or persons entitled to deal on behalf of the Vendor, will be retained by the Agent in accordance with the Australian Privacy Principles and will not be used for any purpose other than confirming the identity of such person/s.
14.5 Without provision of certain information the Agent may not be able to act effectively or at all on the Vendor's behalf.
14.6 The Vendor has the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
14.7 The Agent will provide (where applicable), on request, a copy of its Privacy Policy.
- 15. Data Collection**
Upon signing this Authority the parties agree the Agent, and the form completion service provider providing this form, may without disclosing Personal Information collect, use and disclose to Data Collection Agencies information contained in this Authority and any subsequent sales contract.
- 16. Related Documents / Notices / Electronic Communication**
16.1 The parties agree and confirm any documents and communications in relation to this Authority may be forwarded electronically and where this document has been forwarded electronically (either for signing or otherwise) the party receiving the document confirms having consented to the delivery of the document (and any other materials) by way of the electronic means of delivery before receiving the documentation.
16.2 A Related Document to be served on any party under this Authority shall be in writing and may be served on that party:
(1) by delivering it to the party personally; or
(2) by leaving it for the party at that party's address as stated in this Authority; or
(3) by posting it to the party by ordinary mail or security mail as a letter addressed to the party at the address as stated in this Authority; or
(4) by electronic communication to the party at the appropriate electronic address as stated in this Authority; or
(5) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 16.2(1) to (4) above.
16.3 A document posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the document would be delivered.

- 16.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 13A of the *Electronic Transactions (Victoria) Act 2000*.
- 16.5 Documents given by a party's solicitor or conveyancer will be deemed to have been given by and with the authority of the party.
- 16.6 Documents must be served before 5pm on a business day, failing which, such document will be deemed to have been served on the next business day.
- 16.7 The parties acknowledge and agree an Electronic Document readily accessible via a link within a Related Document is received when the Related Document is served and will be opened when the Related Document is opened.
- 16.8 The parties agree to execution, delivery and service of documents electronically by a method provided by DocuSign or such other agreed electronic signing service provider.

