

CONTRACT FOR SALE OF RESIDENTIAL LOTS IN A COMMUNITY TITLES SCHEME

(**WARNING:** This Contract is not, without amendment, suitable for use in respect of off the plan sales)

(Note: Where there is insufficient space in any Item place details in an Annexure and refer to the Annexure in the Item)

Item

Item Schedule

1. CONTRACT DATE

Clause 1(16)

THE DAY OF 20 (Note: Seller/Seller's Agent must complete)

2. SELLER'S AGENT

Clause 36

Name:
Address:
ABN: Phone: Mobile:
Email:
Licence Number: Expiry Date:

3. SELLER

Clauses 1(50), 13.2, 14, 15, 16, 35 and 36

Name: DOB:
Address:
ABN / ACN Phone: Mobile:
Email:
Solicitor / Self Acting
Address:
Phone: Mobile:
Email: Contact:

4. BUYER'S AGENT (If Applicable)

Name:
Address:
ABN: Phone: Mobile:
Email:

5. BUYER

Clauses 1(12), 13.3, 14, 15, 16, 17, 29 and 31

Name:
Address:
ABN / ACN Phone: Mobile:
Email:
Solicitor / Self Acting
Address:
Phone: Mobile:
Email: Contact:

6. LOT DESCRIPTION

Clauses 1(43), 1(47), 13, 22, 25, 26, 27 and 28

Address:

Lot No. on GTP / BUP / SP Title Reference:

Community Title Scheme (Name and No.):

Local Government: Present Use:

7. PURCHASE PRICE

Unless expressly provided any GST payable is included in the purchase price.

Clauses 1(44) and 6

Purchase Price \$

(**WARNING:** Some property sales may attract GST and require a tax invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure).

8. DEPOSIT

Clause 3

Initial Deposit: Payable on:

(if no date is specified for the payment of the initial deposit, it will be payable upon the signing of the Contract by the Buyer)

Balance Deposit: Payable by a date no later than:

9. DEPOSIT HOLDER

Clauses 3.1 and 3.8

Name:

Trust Account:

Bank: BSB: Account No.:

10. FINANCE Complete all details for Clause 5 to apply.

Clauses 5, 20(2) and 34.2

Finance Amount: Finance Date:

Lender:

11. INSPECTIONS Only completed details will apply

Clauses 1(35), 1(36), 1(41), 4, 20(1) and 34

Note: This Item is not applicable where the Property is sold by Auction(a) Building Inspection: **Yes / No**(b) Pest Inspection: **Yes / No**(c) Pool Safety Inspection: **Yes / No** (Applicable only if Item 13.2(c) is ticked)(d) Community Management Statement: **Yes / No**

(regarding the current registered CMS available from the Department of Natural Resources, Mines and Energy)

Inspection Date: (Date to be completed by)

Note: If 'yes' is selected in Item 11(a), (b), (c) or (d), an Inspection Date must be inserted.

Acknowledged Defects/Exclusions:

12. SETTLEMENT

Clauses 1(18), 1(19), 1(20), 1(51), 1(52), 1(53), 11, 12 and 34

12.1 Date: / / **OR** days from the Date of Contract**OR**

(or as otherwise amended by Clauses 12.3 and 43)

12.2 Settlement will be conducted by: (If neither (a) nor (b) is checked, e-conveyance will apply)

☐ (a) e-conveyance (Clause 12.1) and;

the Electronic Workspace will be opened by the Seller unless otherwise agreed.

☐ (b) Non e-conveyance (Clause 12.2) and the place of settlement will be:

13. POOL SAFETY CERTIFICATE

Clauses 1(40), 1(46) and 12.4(7)

13.1 A Regulated Pool (Shared or Non Shared) forms part of the Property being sold or is on adjacent Regulated Land:☐ Yes ☐ No

(if 'yes' complete Item 13.2 or Item 13.3 below) Note: If more than one Regulated Pool, details below must be completed in respect of each Regulated Pool. Place additional details in Special Conditions.

13.2 ☐ **Non-shared Regulated Pool** - for the Regulated Pool, at the Date of Contract, there is: (one box must be ticked)☐ (a) a current Pool Safety Certificate Certificate No.: _____ Expiry: ____/____/____☐ (b) a current Form 17 - Final Inspection Certificate (issued for newly constructed or altered pools only)☐ (c) no current Pool Safety Certificate - Form 36 - Notice of no Pool Safety Certificate provided by the Seller (see Clause 4.3(1)) (where Item 13.2(c) is ticked the Buyer should indicate an intention with respect to obtaining a Pool Safety Inspection in Item 11(c)).**13.3** ☐ **Shared Regulated Pool** (eg. owned by the Body Corporate) for the Shared Regulated Pool, at the Date of Contract, there is: (one box must be ticked)☐ (a) a current Pool Safety Certificate Certificate No.: _____ Expiry: ____/____/____☐ (b) no current Pool Safety Certificate - Form 36 - Notice of no Pool Safety Certificate - provided**14. ELECTRICITY SAFETY SWITCH**

Clause 1(2)

An Approved Safety Switch ☐ is ☐ is not installed for general purpose socket outlets.**15. SMOKE ALARMS**

Clauses 8.16, 12.4(6) and 20(6)

Smoke alarms are installed on the Property, where applicable, in compliance with the *Fire and Emergency Services Act 1990* and Regulations thereto. ☐ Yes ☐ No**16. EXCLUDED IMPROVEMENTS** Note: unless excluded, all Improvements are included

Clauses 1(30), 11.2, 11.3 and 11.4

17. INCLUDED CHATTELS

Clauses 1(30) and 1(43)

(eg. Dishwashers, microwaves)

18. RESIDENTIAL TENANCIES AND SHORT TERM / HOLIDAY LETTINGS

Clauses 1(9), 8, 12.4(3), 12.4(7) and 18

18.1 Residential Tenancies

Term: _____ Options: _____

Rent: _____ Bond: _____ Tenant/s: _____

Commencement Date: ____/____/____ Completion Date: ____/____/____

18.2 Short Term / Holiday Lettings

	Name	Booking Dates (from and to)	Deposit Paid Yes/No	Deposit Amount	Buyer Accepts Yes/No
1)					
2)					
3)					

Bookings detailed in Item 18.2 which are not accepted by the Buyer must be notified to the Managing Agent not less than _____ days prior to Settlement.

18.3 Managing Agent: _____

Phone: _____ Email: _____

19. ENCUMBRANCES

Clauses 1(25), 12.2(4)(b), 12.4(5) and 18

(If Property is sold subject to Encumbrances details **must** be inserted)

Title:

(eg. Easement)

Other:

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(eg. Statutory Dealings; Unregistered Dealings; Licenses; Security Interests)

Ambiguous references similar to "searches will reveal" will not impose upon the Buyer an obligation to accept the Encumbrance.

20. WORK ORDERS / NOTICES / APPLICATIONS

Clauses 1(34), 1(57), 16.3(3), 16.4, 16.6, 23 and 35

- (a) 1. Local Government/Statutory Authorities: Date: / /
2. Date: / /
3. Date: / /
- (b) Copies of Applications or Orders given to the Buyer in accordance with Section 83 of the NDRA prior to the Date of Contract:
1. Date: / /
2. Date: / /

21. INTEREST ON UNPAID MONIES

Clauses 15.3(3) and 21

- (a) Rate: (If left blank, Item 21(b) is applicable)
- (b) Queensland Law Society Inc Standard Contract Default Interest Rate

22. BODY CORPORATE ENTITLEMENTS AND OTHER MATTERS

Clauses 1(7), 1(8), 13, 16.5 and 28.2

	For the Lot	Aggregate
Contribution Schedule Lot Entitlement		
Interest Schedule Lot Entitlement		

23. BODY CORPORATE INSURANCE

Clauses 1(7) and 1(8)

Insurer: Policy Number:

Building: (Including other Body Corporate Assets) Public Liability:

Additional:
(Please specify)

24. SERVICE CONTRACTS - MANAGERS, SERVICE CONTRACTORS, LETTING AGENTS

Clause 28

	Service Provider	Services Executed	Fee	Pay Period
1)				
2)				
3)				
4)				

25. SELLER'S IMPLIED WARRANTIES (Insert details where applicable)

Clauses 13, 15 and 16.5(6)

(section 223 Body Corporate and Community Management Act 1997)

25.1 The Seller warrants that as at the Date of the Contract:

- (i) section 223(2)(a) and 223(2)(b) - To the Seller's knowledge there are no latent or patent defects in the common property or Body Corporate assets, other than the following:

- (ii) section 223(2)(c) and 223(2)(d) - To the Seller's knowledge there are no actual, contingent or expected liabilities of the Body Corporate that are not part of the Body Corporate's normal operating expenses, other than the following:

25.2 The Seller warrants that as at the completion of the Contract:

section 223(3) - To the Seller's knowledge there are no circumstances in relation to the affairs of the Body Corporate likely to materially prejudice the buyer, other than the following:

26. SELLER'S DISCLOSURE

Clauses 16.5 and 16.8

Disclosures to statements in Clause 16.5:

27. GST WITHHOLDING

Clause 7

27.1 The Property is: (tick one of the following)

- ☐ Existing Residential Premises ☐ New Residential Premises ☐ Potential Residential Land

27.2 (The Buyer is to complete this Item 27.2 where the purchase is of Potential Residential Land)

The Buyer is registered for GST and acquiring the Property for a 'creditable purpose' (as defined in the GST Act):

- ☐ Yes ☐ No

Note: where the answer is 'yes' and the acquisition is for Potential Residential Land Item 27.3(2) is not required to be completed.

27.3 GST Withholding Notice (to be completed by Seller - section 14-255 Taxation Administration Act 1953 (Cth))

- (1) The Buyer **is / is not** required to make a payment to the Australian Taxation Office in compliance with section 14-250 of the Taxation Administration Act 1953 (Cth) in relation to the Property.

- (2) Only complete the following details where payment is required:

(a) Seller's Name: ABN:

(b) Payment amount:

(c) When payable: / / Note: Where no date is inserted payment will be on the Settlement Date.

(d) Where the Purchase Price is not expressed as an amount of money insert the GST inclusive market value of the Property:

Important Note to Buyer: Failure by the Seller to complete this Item does not affect the Buyer's obligation to make a payment under section 14-250 (Clause 7).

28. SPECIAL CONDITIONS

Clause 32

The Special Conditions are inserted under instruction from a party to this Contract and where not prepared by that party, were prepared by an Australian Legal Practitioner and not the Agent. No legal advice has been given or warranty provided by the Agent. Legal advice should be sought.

29. SIGNING

Buyer's Acknowledgement

By signing below the Buyers/Buyers Agent acknowledges, prior to signing this Contract:

- having, where applicable, received copies of any Application or Order in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* as more particularly set out in Item 20(b); and
- in the case of a Property with a Regulated Pool (Item 13.2(c) or Item 13.3(b)) where no Pool Safety Certificate is current, received a **Form 36 - Notice of no pool safety certificate**.

WARNING: By signing this Contract the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Contract.

IMPORTANT: COOLING-OFF PERIOD (SECTION 165(2))

Note: Cooling-off Period does NOT apply to a Contract for sale of a lot in a community title scheme by auction.

The contract may be subject to a 5 business day statutory cooling-off period. A termination penalty of 0.25% of the purchase price applies if the buyer terminates the contract during the statutory cooling-off period. It is recommended the buyer obtain an independent property valuation and independent legal advice about the contract and his or her cooling-off rights, before signing.

By signing this Contract:

- The Buyer offers to purchase the Property for the Purchase Price and otherwise on the terms and conditions as set out in this Contract.

Buyer(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1.	/ /
2.	/ /
3.	/ /
4.	/ /

- The Seller accepts the above offer.

Seller(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1.	/ /
2.	/ /
3.	/ /
4.	/ /

Deposit Holder: (To be signed on receipt of Initial Deposit)

(*) Witness Signature is not required where a party signs electronically (refer Clause 38.9)

IMPORTANT NOTES:

- Provision of incorrect answers or information in this Item Schedule can result in penalties or legal action.
- All Parties should sign annexures, initial any alterations to the Contract and, except where the Contract is signed electronically, initial at the bottom of each page of the Contract (Failure to do so does not invalidate this Contract)

Copies to be provided to all parties

Terms and Conditions

1. Definitions

Defined terms have the same meaning throughout this Contract.

In this Contract (which includes the Item Schedule) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
 - (a) the date possession being given to the Buyer; or
 - (b) the Settlement Date.
- (2) **Approved Safety Switch:** defined as a residual current device under Schedule 9 of the *Electrical Safety Regulation 2013*.
Note: Where an Approved Safety Switch is not installed, advice should be obtained from a licensed electrician to ensure compliance with the *Electrical Safety Regulation 2013*.
- (3) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for adjustments as provided in this Contract.
- (4) **Bank:** A business carrying on a bank business as defined in section 5 of the *Banking Act 1959 (CTH)*, the Reserve Bank or Bank constituted under State law.
- (5) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.5 of this Contract.
- (6) **Bank Cheque:** An unendorsed cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (7) **BCCMA:** *Body Corporate and Community Management Act 1997*.
- (8) **Body Corporate:** The Body Corporate created for the Scheme.
- (9) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (10) **Building:** The Building in which the Lot is situated in whole or in part.
- (11) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland and excluding the period from 27th December to 31st December inclusive (unless otherwise agreed between the parties).
- (12) **Buyer:** The Buyer named in Item 5, including any additional Buyers listed in an attached annexure.
- (13) **Contract:** means this Contract including Item Schedule, Terms and Conditions, Special Conditions and attached annexures or documents referred to in the Item Schedule.
- (14) **CMS:** means Community Management Statement as registered, or capable of being registered, with the Department of Natural Resources, Mines and Energy.
- (15) **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.
- (16) **Date of Contract:** The date as set out in Item 1 or the date of the last party signing, whichever is the later.
- (17) **Disclosure Statement:** The statement complying with section 206 or section 213 of the BCCMA.
- (18) **e-conveyance:** means a conveyancing transaction to be completed using e-conveyancing.
- (19) **e-conveyancing:** means a system of land conveyancing that uses an ELN to lodge documents electronically for the purposes of the land titles legislation.
- (20) **ECNL:** means *Electronic Conveyancing National Law (Queensland)*.
- (21) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Queensland) Act 2001* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (22) **Electronic Workspace (Workspace):** for an e-conveyance, means a shared electronic Workspace within an ELN that allows the participating subscribers to the e-conveyance:
 - (a) to lodge a document electronically under the ECNL; and
 - (b) if relevant, to authorise or complete Financial Settlement of the e-conveyance.Once opened such Electronic Workspace will be an electronic address designated by the parties in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- (23) **Electronically Signed:** means an electronically generated signature and includes a digital signature as defined in the ECNL.
- (24) **ELN:** means an Electronic Lodgment Network under the ECNL.
- (25) **Encumbrance:** means matters affecting the Lot and title to the Property, both registered and un-registered, including (but not limited to) statutory easements, rights referred to in the Certificate of Title and Personal Property Security Interests as defined in section 12 of the *Personal Property Securities Act 2009 (CTH)*.
- (26) **Financial Settlement:** of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.
- (27) **Financial Settlement Schedule:** means a schedule within the electronic workspace listing financial settlement details for source and destination accounts necessary to complete Financial Settlement.
- (28) **GST:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (29) **GST Act:** refers to the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)*.
- (30) **Improvements:** All fixed or permanent structures comprising the Lot and any fixed items, including fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item 16.
- (31) **Item:** means items detailed in the Item Schedule of this Contract.
- (32) **Land:** The Scheme land.
- (33) **Land Tax Clearance Certificate:** A certificate issued by the Office of State Revenue that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (section 60(5)(a), (b) of the *Land Tax Act 2010*)

- (34) **NDRA:** means the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.
- (35) **New Pool Safety Standard:** means the compliance standard applicable under the *Building Act 1975* to a Regulated Pool from the earlier of the 30th November 2015 or the date a property is sold or leased.
- (36) **Nonconformity Notice:** means the Pool Safety Nonconformity Notice (Form 26) issued where the Pool Safety Inspector is not satisfied the pool complies with the New Pool Safety Standard.
- (37) **Outgoings:**
- (a) All government and local government rates and charges assessed on the Land including water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date; and
 - (b) Contributions to the administrative and sinking funds levied from time to time by the Body Corporate and special contributions levied by the Body Corporate under the Regulation Module or pursuant to a by-law for exclusive use.
- (38) **Participation Rules:** means the rules determined under section 23 of the ECNL.
- (39) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (40) **Pool Safety Certificate:** means, with respect to a complying Regulated Pool, either a Pool Safety Certificate in the approved form under Sections 246AA and 246AK of the *Building Act 1975* or a Building Certificate issued under Section 246AN(2) of the *Building Act 1975*.
- (41) **Pool Safety Standard:** means the compliance standard applicable to the Regulated Pool at the time the pool was constructed.
- (42) **Plan:** The 'Plan' containing the 'Lot' registered under the *Land Title Act 1994 (QLD)*.
- (43) **Property:** The Lot described in Item 6 together with Improvements described in Clause 1(30), and the included chattels described in Item 17.
- (44) **Purchase Price:** The sum referred to in Item 7.
- (45) **Regulated Land:** means regulated land as defined under section 231A of the *Building Act 1975*.
- (46) **Regulated Pool:** Where used in this Contract has the same meaning as given to it by section 231B of the *Building Act 1975*.
Note: a Regulated Pool is a swimming pool as defined under the *Building Act 1975* which will include a spa pool.
- (47) **Regulation Module:** The regulation module for the Scheme as described in Item 6.
- (48) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (49) **Scheme:** The Community Titles Scheme containing the Lot.
- (50) **Seller:** The Seller named in Item 3, including any additional Sellers listed in an attached annexure.
- (51) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (52) **Settlement Date:**
- (a) The appointed date specified in Item 12 for Settlement to occur; or
 - (b) a new date for Settlement to occur as determined in accordance with Clause 12.3; or
 - (c) an alternate date for Settlement to occur as determined in accordance with Clause 43; or
 - (d) such other alternate date for Settlement to occur as may be mutually agreed by the parties in writing.
- (53) **Settlement Time:** of an e-conveyance, means the time of locking of the Workspace but not later than 4:00pm AEST on the Settlement Date.
- (54) **Special Contribution:** a levy on the owner of a lot fixed by the Body Corporate, in accordance with the Regulation Module, where a liability arises for which no provision, or inadequate provision has been made in the Body Corporate's budget.
- (55) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.
- (56) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.
- (57) **Work Order:** a valid notice or order issued by a court, tribunal or other competent authority or notice served or issued in compliance with an Act or Regulation that requires work to be done, or monies spent, on or in relation to the Property.
- 2. Interpretation**
- In this Contract, unless the contrary intention appears:
- (1) the singular includes the plural and vice versa;
 - (2) 'person' includes a firm, a Body Corporate together with executors, administrators, successors and assigns;
 - (3) an agreement, representation or warranty:
 - (a) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (b) on the part of two or more persons binds them jointly and severally;
 - (4) a reference to:
 - (a) an item number is a reference to an item in the Item Schedule;
 - (b) a person includes the person's executors, administrators, successors and assigns;
 - (c) a document includes any variation to that document; and
 - (d) any law includes all regulations and other instruments under it and amendments or replacements of any of them;
 - (5) the Item Schedule and any attached addendum pages and annexures shall form part of this Contract;
 - (6) words and phrases defined in the BCCMA have the same meaning; and
 - (7) where a day upon which an event is to occur is to be calculated as a period of days from, after or before a specific date, the specific date is not to be included in the period.
- 3. Deposit**
- 3.1 The Buyer must pay the Deposit to the Deposit Holder as stakeholder in the amount and at the times required in Item 8.
- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time (except as provided by Clause 3.4), or by cheque which is not honoured on presentation, will be an act of default by the Buyer.

- 3.4 Where the Buyer pays all or part of the Deposit monies via an electronic funds transfer, the Buyer will not be in default of Clause 3.3 where the Buyer provides to the Seller, not later than midnight on the date for payment specified in Item 8, written evidence of such electronic funds transfer and the monies are credited to the Deposit Holder's account not later than midnight on the date which is 2 Business Days after the date for payment as specified in Item 8.
- 3.5 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.
- 3.6 The Deposit is payable to the Seller:
- (1) on Settlement; or
 - (2) in case of the Buyer's Default on default.
- 3.7 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.
- 3.8 Investment of the Deposit: (*Note: see section 17 of the Agents Financial Administration Act 2014*)
Where the Deposit Holder is instructed by the parties to invest the Deposit, subject to any legislative requirements, then (except in the case of Bank Bond/Guarantee):
- (1) the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and the Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties;
 - (2) the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable;
 - (3) the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit;
 - (4) the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies;
 - (5) where the Contract does not proceed to Settlement, the interest is payable to the party entitled to the Deposit in accordance with Clauses 3.6 and 3.7;
 - (6) the Deposit Holder will lodge any necessary taxation return, and may pay any tax out of the Deposit and interest. The Buyer and the Seller equally indemnify the Deposit Holder against any tax payable;
 - (7) all costs in relation to this investment will be borne by the party referred to in Clause 3.8(4) and may be recovered by the Deposit Holder out of the Deposit and interest;
 - (8) the Deposit Holder does not have to account to the Buyer or the Seller for interest for distribution until the investment of the Deposit matures and the bank debits tax and any other charges or expenses are deducted from the interest; and
 - (9) the Deposit Holder, being a licensed Agent, may not invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.

4. Inspections

Note: reference to Pool Safety Inspections only applies where Item 13.2(c) is ticked and applicable.

- 4.1 The Contract is subject to and conditional upon the Buyer, at their own expense and by the Inspection Date (or such extended date as may be agreed):
- (1) where Item 11(a) and/or (b) applies, obtaining the relevant inspection report/s satisfactory to the Buyer (excluding Acknowledged Defects/Exclusions);
 - (2) where Item 11(c) applies, obtaining a pool safety inspection report satisfactory to the Buyer; and
 - (3) where Item 11(d) applies, examining and deeming the relevant CMS satisfactory to the Buyer.
- 4.2 In compliance with this clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the CMS and inspection report/s in compliance with Clause 4.1.
- 4.3
- (1) Where Item 13.2(c) applies and the Seller has provided a Form 36 notice of no Pool Safety Certificate and the Buyer has indicated an intention to obtain a Pool Safety Inspection in Item 11(c), the Seller authorises the Buyer to appoint a licensed Pool Safety Inspector for the purposes of carrying out the inspection and to receive the results of such inspection.
 - (2) The Buyer will be deemed satisfied with the Pool Safety Inspection where a Pool Safety Certificate issues on or before the Inspection Date.
- Note to Buyer:** *Building Act 1975* - If no Pool Safety Certificate (Form 36) is received and the Contract proceeds to Settlement, it shall be the Buyer's responsibility to, at its own cost, obtain such certificate within 90 days, (the usual period) or such further period, after Settlement where section 246ATJ(2)(b) of the *Building Act 1975* applies.
- Note to Seller:** Where a Pool Safety Inspection has been carried out resulting in a Nonconformity Notice issuing and the Contract does not proceed to Settlement, the local authority may require the pool owner, at its cost, to carry out works to comply with the relevant Pool Safety Standard.
- 4.4 Upon receipt of any inspection report the Buyer must promptly, but no later than 5:00pm AEST on the Inspection Date, give notice to the Seller:
- (1) that the Buyer is satisfied with the inspection report/s; or
 - (2) that the Buyer is not satisfied with the inspection report/s and, subject to Clause 4.9, terminates the Contract.
- 4.5 The Buyer must at all times act reasonably.
- 4.6 Where the Buyer serves a notice on the Seller in accordance with Clause 4.4(2), the Seller may promptly upon receiving such notice, require the Buyer to provide a copy of the relevant inspection report/s, which the Buyer must provide.
- 4.7 Should the Buyer not give notice to the Seller in accordance with Clause 4.4 by 5:00pm AEST on the Inspection Date the Seller may, by notice, terminate this Contract.
- 4.8 In respect to Clause 4.4(2) and 4.7, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.4 or give notice in accordance with Clause 4.4(1), where upon this Contract will be in full force and effect.
However, with respect to Item 11(c) Pool Safety Inspection, a party may not terminate after receiving a Pool Safety Certificate.
- 4.9 It is a condition precedent to termination under Clause 4.4 taking effect that the Buyer provide the inspection report/s if required by the Seller under Clause 4.6.
- 4.10 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.7 will apply.

- 4.11 In respect of white-ants, risk of infestation of a dwelling on the Land in itself will not constitute a reason for termination of this Contract.
- 4.12 Inspectors who conduct building and/or pest inspections for the purposes of this Contract must be licensed as an Inspector holding a complete residential building inspection licence in accordance with the *Queensland Building and Construction Commission Act 1991* and Regulation there to.
- 4.13 Inspectors who conduct Pool Safety Inspections for the purposes of this Contract must be licensed as Pool Safety Inspectors by the Pool Safety Council.
- 4.14 Clause 4 does not apply where the Property is sold by auction.
- 4.15 In respect of Item 11(d) where the Buyer has promptly requested the CMS report from the relevant authority and such request has not been satisfied at the Inspection Date (Item 11) the parties will extend the Inspection Date for the CMS to a day 2 Business Days after receipt of the CMS by the Buyer.

5. Finance

This clause shall not apply unless all details in Item 10 are complete.

- 5.1 This Contract is subject to and conditional upon the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item 10.
- 5.2 In complying with this clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller no later than 5:00pm AEST on the Finance Date that:
- (1) the Finance condition has been satisfied; or
 - (2) Finance approval in accordance with Clause 5.1 has not been obtained and the Contract is terminated; or
 - (3) Finance approval in accordance with Clause 5.1 has not been obtained and the Buyer waives the benefit of this condition.
- 5.4 Should the Buyer not give notice to the Seller in accordance with Clause 5.3 by 5:00pm AEST on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.5 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof detailing that the provisions of Clause 5.1 have not been satisfied.
- 5.6 It is a condition precedent to termination under Clause 5.3(2) taking effect that the Buyer provide written evidence if required by the Seller under Clause 5.5.
- 5.7 Should the Buyer not obtain Finance Approval by the Finance Date and not give notice in accordance with Clause 5.3, and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.4, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount and this Contract will be in full force and effect.
- 5.8 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this clause.
- ## 6. GST
- 6.1 Unless expressly provided in the Contract the Purchase Price includes any GST liability in respect of the sale of the Property.
- 6.2 Any GST incurred by the Seller in respect of a taxable supply under this Contract must be paid or reimbursed by the Buyer on provision of a tax invoice.

7. GST Withholding

- 7.1 Where the Property the subject of this Contract is, within the meaning of the GST Act a 'new residential premises' or 'potential residential land' the Seller must give to the Buyer a GST Withholding Notice (Item 27.3) in accordance with section 14-255 of the *Taxation Administration Act 1953 (Cth)*.
- 7.2
- (1) Where an amount is required to be paid to the Australian Taxation Office (ATO) in accordance with the GST Withholding Notice (Item 27.3) the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO the amount (GST Withholding Amount) as required in Item 27.3(2) in accordance with section 14-250 of the *Taxation Administration Act 1953 (Cth)*.
 - (2) Notwithstanding the provisions of Clause 7.2(1) the Buyer will if requested by the Seller provide to the Seller at settlement a bank cheque for the GST Withholding Amount payable to the Commissioner of Taxation.
 - (3) Where the Buyer has provided a bank cheque to the Seller in accordance with Clause 7.2(2) the Seller must forthwith forward such bank cheque to the ATO.
- 7.3 Where the GST Withholding Notice (Item 27.3) is not completed by the Seller, the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO, in compliance with the GST Act, an amount calculated in accordance with section 14-250(6) of the *Taxation Administration Act 1953 (Cth)*.
- 7.4 Where the Buyer is required to make a payment in accordance with section 14-250 (*Taxation Administration Act 1953 (Cth)*) the Buyer must lodge with the ATO the following forms:
- (1) not less than 14 days prior to Settlement, a GST Property Settlement Withholding Notification (Form 1); and
 - (2) at or before Settlement, a GST Property Settlement Date Confirmation (Form 2).
- 7.5 On or before Settlement the Buyer must provide to the Seller a copy of:
- (1) the confirmation email received from the ATO following lodgement of the Form 1 showing the lodgement and payment reference numbers;
 - (2) the Form 2 lodged with the ATO; and
 - (3) a completed ATO payment slip.

8. Adjustments

- 8.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 8.2 All Outgoings paid and Rents and Income received (including post Settlement reassessments) by either party must be apportioned based on the Adjustment Date paid or received at Settlement or as otherwise appropriate. This excludes water rates charges based on usage.
- 8.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned between the parties as at the Adjustment Date.
- 8.4 Rent and Income unpaid for any period prior to the Settlement Date and not adjusted between the parties at Settlement is not assigned to the Buyer but remains a debt due to the Seller in which case the provisions relating to Rent of section 117 of the *Property Law Act 1974* are not applicable.
- 8.5 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person resident in Queensland.

- 8.6 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or Body Corporate, or where no such information is available on the latest assessment.
- (2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 8.7 Any amount, other than Land Tax, adjustable under this provision which relates to lots other than that included in the Property shall be (where no specific assesment is issued) adjusted.
- (1) Where charges are imposed on a 'per lot' basis:
- $$\text{Adjustment} = \frac{\text{Amount assessed}}{\text{The number of lots in that assessment}}$$
- (2) Otherwise:
- $$\text{Adjustment} = \frac{\text{Amount assessed} \times \frac{\text{Interest schedule lot entitlement of the Lot}}{\text{aggregate interest schedule lot entitlement of the Scheme}}}{1}$$
- 8.8 (1) Should the Office of State Revenue not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum, from the settlement monies, as the Office of State Revenue specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date.
- Upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.
- This obligation is a continuing obligation and does not lapse at Settlement.
- (2) Where a Land Tax Clearance Certificate has been issued by the Adjustment Date the Buyer may deduct, as an adjustment, the amount specified in such a certificate and same shall forthwith be paid to the relevant authority and the Seller will be released from any obligations in respect to Land Tax on the Land.
- 8.9 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this clause, the discount shall not be taken into account, unless already received.
- 8.10 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:
- $$\text{Adjustment} = \text{TC/RD} \times \text{AD}$$
- Where:
- TC = Total Usage Charge as at the Adjustment Reading Date
- RD = Days between the previous reading and Adjustment Reading Date
- AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.
- (ie. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water meter was read for the purpose of issue of Local Government water usage assessment)
- 8.11 The Buyer is responsible for:
- (1) obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 8.10;
- (2) determining an Adjustment amount to be paid in accordance with Clause 8.10; and
- (3) disclosing the information in Clause 8.11(1) and (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 8.12 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority or Body Corporate for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority or Body Corporate forthwith. This will be an adjustment for the purposes of Clause 8.1.
- 8.13 It shall be the Buyer's responsibility to obtain at its own cost all details of Outgoings from relevant government and Local Government authorities.
- 8.14 Any Special Contributions or exclusive use levy levied on the issuing of a notice prior to the Date of Contract will be the responsibility of the Seller and thereafter will be the responsibility of the Buyer.
- 8.15 Where information regarding Outgoings, Rents and income details are not otherwise available, the Seller will, upon request, provide details from records in the Seller's possession.
- 8.16 Where smoke alarms have not been installed on the Property in compliance with the *Fire and Emergency Services Act 1990* (and Regulations thereto), the cost of installing all applicable smoke alarms on the Property is:
- (1) to be adjusted in favour of the Buyer at Settlement at a sum agreed by the parties; or
- (2) where the parties are unable to agree, the Buyer will obtain a quote for the installation, and a sum equivalent to the amount quoted will be adjusted in favour of the Buyer at Settlement.
- 9. Preparation and Completion of Documents**
- 9.1 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Lot and any assignment or other document reasonably necessary for Settlement of this Contract.
- 9.2 Upon compliance by the Buyer with the provisions of this Contract and where the Seller is legally represented (payment by the Buyer of the Seller's reasonable legal expenses), the Seller will upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of assessment and payment of transfer duty.
- 9.3 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 9.2 if the Seller is not represented by a solicitor.
- 10. Release of Security Interest**
- Should any of the assets, being personal property, be subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies:
- (1) such assets will be transferred free of the security interest;
- (2) where required to perfect the release of the security interest the Seller will ensure that prior to Settlement the Buyer receives from the secured party a written undertaking to register a financing change statement with respect to the personal property the subject of the security interest; and
- (3) words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in Clause 10 unless the context requires otherwise.

11. Pre-Settlement Obligations

- 11.1 (1) The Seller must maintain the Property in the condition as at the Date of Contract and ensure no damage or loss to the condition of the Property occurs up to and including the date of Settlement (fair wear and tear excepted).
- (2) The Seller will not be liable for loss or damage to the Property unless caused by the Seller's neglect or fault. Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies.
- 11.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.
- 11.3 Property not removed in accordance with Clause 11.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.
- 11.4 Where the Buyer becomes aware the Seller has not satisfied its obligations under Clauses 11.1 or 11.2, the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification by Settlement. However, where the Seller fails to carry out rectification by Settlement, Clause 11.5 will apply.
- 11.5 The Buyer may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to maintain the Property in relation to Clause 11.1 and costs incurred in dealing with property not removed in accordance with Clause 11.2 as liquidated damages notwithstanding Settlement may have taken place.
- 11.6 Where, before the date of possession or Settlement, whichever occurs earlier, the lot, the subject of this Contract, is so destroyed or damaged as to be unfit for occupation as a dwelling, the Buyer may, at the Buyer's option, rescind the Contract by notice in writing given to the Seller or the Seller's solicitor not later than the date of possession or Settlement, whichever occurs earlier.

12. Settlement

12.1 Settlement by Electronic Conveyancing (e-conveyance)

- (1) This Clause 12.1 will apply where:
- (a) Item 12.2 specifies settlement by e-conveyance; or
- (b) Either Clause 12.2(3) or Clause 12.3(4)(a) are applicable.
- (2) Where settlement is by e-conveyance, Settlement including lodgement of Transfer Documents and payment of Balance Purchase Price, adjusted as provided in this Contract, will proceed electronically in accordance with the ECNL.
- (3) Where an inconsistency exists between this and other clauses in this Contract this Clause 12.1 will apply.
- (4) Each party must:
- (a) be, or engage a representative who is a Subscriber (as defined in the ECNL) for the purposes of the ECNL; and
- (b) conduct this transaction in accordance with the ECNL and Participation Rules.
- (5) Once this Contract has become unconditional, the party responsible for opening the Electronic Workspace (Refer Item 12.2(a)) must promptly cause a Workspace to be opened and populated with all necessary information and documents to facilitate Settlement and advise all relevant parties, including relevant financial institutions, and invite them to join the Workspace.

- (6) Upon being invited to join the Workspace the remaining parties together with relevant financial institutions must promptly join the Workspace and cause the Workspace to be populated with all necessary information and documents, to facilitate Settlement.
- (7) The parties will confirm through the Workspace, a Settlement Time. Neither party may terminate this Contract while the Workspace is locked for Settlement.
- (8) Settlement occurs when the Workspace for the e-conveyance records that:
- (a) Financial Settlement occurs; or
- (b) if there is no Financial Settlement, the documents necessary to transfer title have been accepted for electronic lodgement by the Titles Registry Office.
- (9) Each party must do everything reasonably necessary and in a reasonable timeframe to ensure Settlement (including Financial Settlement) can occur electronically on the Settlement Date.
- (10) Should deposit monies held by the agent be required for settlement purposes the agent is authorised and directed, if instructed by the Seller, to release the deposit monies less any agent's commission to the trust account of the Seller's Solicitor. The Seller's Solicitor is authorised to pay the monies as instructed by the Seller in accordance with the directions of the parties.
- (11) The parties agree payments of the GST Withholding Amount as provided by Clause 7 will be complied with where, at Settlement Time, payment of the required amount is provided for and required in the Financial Settlement Schedule.
- (12) All monies required for e-conveyance Settlement must be cleared funds prior to Settlement Time.
- (13) Where monies have been paid to an incorrect account the parties must take all reasonable steps to recover such monies for payment to the intended recipient.
- (14) Each party will be responsible for their own costs in respect to e-conveyance.
- (15) Where an Outgoing or other financial obligation is to be discharged or paid at Settlement, if such payment cannot be facilitated through the e-conveyance the parties will make suitable arrangements to discharge or pay the Outgoing or other financial obligation by means other than through e-conveyance.
- (16) Where a party, acting reasonably, is not able to proceed with e-conveyance but is able to proceed with Settlement via non e-conveyance:
- (a) written notice, including advice regarding the reason for such inability, must be given to the other party as soon as possible, but not less than 5 Business Days prior to the Settlement Date;
- (b) once such notice has been given, the parties agree Settlement will proceed via non e-conveyance and the provisions of Clause 12.2 will apply; and
- (c) time remains of the essence.
- (17) Notwithstanding Item 12.2 specifying Settlement is to occur by e-conveyance, the parties may agree to Settlement by non e-conveyance at any time up until 1 Business Day prior to Settlement, at which point the provisions of Clause 12.2 will apply.

12.2 Settlement by a Method other than Electronic Conveyancing (Non e-conveyance)

- (1) This Clause 12.2 will apply where:
 - (a) Item 12.2 specifies settlement by non e-conveyance; or
 - (b) Either Clause 12.1(16), 12.1(17) or 12.3(4)(b) are applicable.
- (2) Settlement shall take place on the Settlement Date between 10:00am and 4:00pm AEST:
 - (a) at the settlement office of the Seller's mortgagee or solicitor; or
 - (b) as otherwise agreed upon by the parties; or
 - (c) failing agreement (not less than 2 Business Days prior to the Settlement Date), at the nearest office, to the nominated place for Settlement, at which land title documents may be lodged for registration.
- (3) Notwithstanding Item 12.2 specifying Settlement is to occur by non e-conveyance, the parties may agree to Settlement by e-conveyance at any time up until 1 Business Day prior to Settlement, at which point the provisions of Clause 12.1 will apply.
- (4) On Settlement:
 - (a) the Buyer must, pay the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitor in writing); and
 - (b) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer) Transfer Documents free from Encumbrances, unless detailed in Item 19, executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (5) The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.
- (6) On confirmation of the Settlement Date, the parties must (and must instruct their relevant financial institutions to) promptly provide all necessary information and documents, to facilitate Settlement.
- (7) Each party must do everything reasonably necessary and in a reasonable timeframe to ensure Settlement can occur on the Settlement Date.

12.3 Settlement - Extension Provisions

- (1) Where both parties have complied with their pre-settlement obligations under either Clause 12.1 or 12.2 and Settlement fails to occur on the Settlement Date, due to failure or inability by:
 - (a) a relevant financial institution to comply with an instruction or requirement under either Clause 12.1 or 12.2, where such failure or inability does not arise due to any act or omission by a party; or
 - (b) an e-conveyancing platform provider, or user of such platform (including a party to the Workspace), to facilitate Settlement due to system or connectivity failure,the date for Settlement is extended by 1 Business Day (Automatic Extended Settlement Date) and neither party is in default. This Clause 12.3(1) may only be applied to extend the Settlement Date once.
- (2) Upon a party becoming aware Settlement has failed in accordance with Clause 12.3(1), the party will promptly provide notice to the other party, advising of such failure and providing relevant supporting evidence available.

- (3) Where Clause 12.3(1) applies and circumstances require an extension longer than provided by Clause 12.3(1), either party may give written notice to the other party, no later than 4:00pm AEST on the Settlement Date, detailing the reason/s for further delay, providing relevant supporting evidence, and nominating a new settlement date, which will become the date for Settlement. There may be more than one extension under this Clause 12.3(3), but for a total of not more than 4 Business Days from the Automatic Extended Settlement Date.
- (4) Where the provisions of Clauses 12.3(1) and/or 12.3(3) have been applied, and the parties have complied with the pre-settlement provisions of Clause 12.1 or Clause 12.2 (as applicable), and neither party is otherwise in default, Settlement including Financial Settlement will be completed on the date for Settlement:
 - (a) by e-conveyance in accordance with Clause 12.1; or
 - (b) if the parties agree (or settlement by e-conveyance is not possible), in accordance with Clause 12.2.
- (5) In respect of this Clause 12.3, time remains of the essence.
- (6) Nothing in this Clause 12.3 prevents or otherwise restricts the parties from extending the Settlement Date by mutual agreement in writing.

12.4 Settlement - Handover

On Settlement in accordance with Clause 12.1(8) or 12.2(4) (whichever is applicable) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Lot necessary to register the transfer of the Lot to the Buyer as owner. Where the title applies to more than one lot the cost of any new title will be borne by the Buyer;
- (2) all the Seller's keys and other devices and codes for entry, exit and security, unless an alternative time and place for delivery is agreed to in writing;
- (3) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notice to Tenants advising of the sale, provided however section 117 of the *Property Law Act 1974* does not apply insofar as it assigns to the Buyer the right to recover rent arrears;
- (4) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto, to which the Buyer may be reasonably entitled;
- (5) in compliance with Clause 18, all documentation necessary to effect release of any Encumbrance over the Property, except as detailed in Item 19, including where applicable, property subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies;
- (6) a properly completed property transfer information form in accordance with the *Fire and Emergency Services Act 1990*;
- (7) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular, but not exclusively, those relating to prior transfers, tenancies, licenses, warranties, all relevant Pool Safety Certificates or exemptions under Section 245B of the *Building Act 1975* (unless a 'notice of no pool safety certificate' has been provided to the Buyer prior to the Date of Contract in accordance with Section 28 of the *Building Regulation 2021*), and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties; and

- (8) vacant possession of the Property (except if tenanted) and title to all the Property.
- 13. BCCMA**
- 13.1 This Lot is sold subject to BCCMA and the Body Corporate By-laws.
- 13.2 The Seller must give to the Buyer forthwith upon receipt from the Body Corporate, copies of any notices from or resolutions passed by the Body Corporate or any new or amended CMS recorded for the Scheme received after the Date of Contract.
- 13.3 The Buyer may terminate this Contract by written notice to the Seller (given at or prior to Settlement) if, after the Date of Contract but prior to Settlement, the Buyer becomes aware of any action taken, resolution passed or difference in any new or amended CMS (particulars of which have not been disclosed by the Seller in this Contract) by the Body Corporate which would materially prejudice the Buyer if compelled to complete the Contract.
- 14. Buyer's Default**
- 14.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Buyer specifying the default, terminate or affirm this Contract.
- 14.2 Should the Seller terminate this Contract in accordance with Clause 14.1 the Seller may, without prejudice to any other rights:
- (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.5;
 - (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages;
 - (3) retain the Property and sue the Buyer for damages for breach of this Contract;
 - (4) claim any Deposit monies that are in arrears as a liquidated debt; and
 - (5) appropriate the profit, if any, on resale.
- 14.3 Should the Seller affirm this Contract in accordance with Clause 14.1 the Seller may, without prejudice to any other rights:
- (1) sue the Buyer for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract; and
 - (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.
- 14.4 Damages will include:
- (1) professional fees and costs incurred to satisfy the terms of this Contract; and
 - (2) legal costs on an indemnity basis.
- 15. Seller's Default**
- 15.1 If the Seller is in default under this Contract then, providing the Buyer is not in default, the Buyer may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Seller specifying the default, terminate or affirm this Contract.
- 15.2 Should the Buyer affirm this Contract the Buyer may, without prejudice to any other rights, sue the Seller for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract.
- 15.3 Should the Buyer terminate this Contract in accordance with Clause 15.1 the Buyer may, without prejudice to any other rights:
- (1) recover from the Seller/Deposit Holder the Deposit and any other monies paid by the Buyer under the Contract;
 - (2) be entitled to any interest earned on a Deposit invested in accordance with Clause 3.8;
 - (3) in addition, be entitled to claim interest on any monies paid by the Buyer under the Contract (other than the Deposit) at the rate prescribed in Item 21 to be calculated from and including the date of payment by the Buyer up to, but excluding the date on which the money is repaid; and
 - (4) sue the Seller for damages.
- 15.4 Should the Seller fail to provide information as required by Clause 13.2 before Settlement, the Buyer may sue the Seller for damages.
- 15.5 Damages will include:
- (1) professional fees and costs incurred to satisfy the terms of this Contract; and
 - (2) legal costs on an indemnity basis.
- 16. Seller's Warranties**
- 16.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:
- (1) the Seller will be the Registered Owner of an estate in fee simple in the Lot;
 - (2) there is no impediment to the Seller completing the sale in accordance with the provisions and requirements of this Contract.
- 16.2 If a warranty set out in Clause 16.1 is incorrect or is breached by the Seller, the Buyer may by notice to the Seller, terminate this Contract.
- 16.3 The Seller warrants, unless otherwise disclosed in (or in accordance with) this Contract that at the Date of Contract and at Settlement:
- (1) the Seller is not insolvent or bankrupt;
 - (2) and except as provided in Clause 16.6, the Seller has no knowledge of any legal actions, or any circumstance or communication which may give rise to any legal actions, affecting or which may affect the Property or any part of it;
 - (3) except as disclosed in Item 20(a) and 20(b), the Seller has no knowledge of any outstanding or unsatisfied judgments, Work Orders, demands or writs, or any circumstance or communication which may give rise to such, with respect to any Statutory Body, Act, Regulation or By-Law:
 - (a) which may adversely affect the Property or the Seller's ability to complete this Contract; or
 - (b) which may bind the Buyer;
 - (4) any Improvements to the Property not excluded in Item 16 will not have been removed by the Seller;
 - (5) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to a notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register;
 - (6) the Seller has no knowledge of any encroachments to or from the Property; and
 - (7) utilities servicing the Lot or utilities on the Lot servicing adjoining lots are legally secured.
- 16.4 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Work Order as contemplated by Clauses 16.3(3) and 35.1.

- 16.5 The Seller warrants at the Date of Contract, unless otherwise disclosed in Item 26:
- (1) the CMS for the Scheme is in full force of effect and there is no proposed change or Body Corporate meeting called proposing any change, or resolution in respect to the current operation and management of the scheme;
 - (2) there are no impediments registered or unregistered with respect to or affecting indefeasibility of common property or Body Corporate assets;
 - (3) the Scheme CMS is complete in its allocations with respect to details affecting the Lot, and/or the registered owner;
 - (4) improvements to the common property and exclusive use rights which benefit the Lot or the registered owner are current and have all necessary consents, approvals and by-laws from the Body Corporate;
 - (5) the information contained in Item 22 is correct; and
 - (6) the information contained in Item 25 is correct.
- 16.6 The Seller warrants as at the Date of Contract, unless disclosed prior to entering into this Contract in accordance with Section 83 of the NDRA (refer to Item 20(b)), the Lot is not subject to or affected by an Application or Order under Chapter 3 of the NDRA.
- 16.7 If a warranty set out in Clause 16.3 (*excluding matters disclosed in Item 28*) is incorrect or is breached by the Seller, the Buyer may, where the Buyer would be materially prejudiced if compelled to complete the Contract, by notice to the Seller given within 2 Business Days before the Settlement Date:
- (1) forthwith terminate this Contract; or
 - (2) elect to complete this Contract and reserve its rights to claim compensation.
- 16.8 If a warranty set out in Clause 16.5(1) to (5) (*excluding matters disclosed in Item 26*) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller given prior to Settlement, where the Buyer would be materially prejudiced if compelled to complete the Contract:
- (1) forthwith terminate this Contract; or
 - (2) elect to complete this Contract and reserve its rights to claim compensation providing notice to this effect has been given to the Seller in writing at or prior to Settlement.
- 16.9 If the warranty set out in Clause 16.5(6) is incorrect or is breached by the Seller the Buyer may by notice to the Seller given within 14 days after the Buyer's copy of the Contract is received by the Buyer, terminate this Contract.
- 16.10 If the warranty set out in Clause 16.6 is incorrect or is breached by the Seller, the Buyer may terminate the Contract at any time before the Contract settles by giving a signed, dated notice of termination to the Seller or the Seller's Agent stating that the Contract is terminated under section 86 of the NDRA.
- 16.11 Any notice of termination given to the Seller under Clauses 16.7, 16.8 or 16.9 must set out clearly, details of the incorrect or breached warranty.
- 16.12 Nothing in this Contract precludes the Buyer from terminating this Contract under the provisions of section 224 of the BCCMA.
- 17. Foreign Investment Approval**
The Buyer warrants either:
- (1) the purchase is not a notifiable action with respect to the *Foreign Acquisitions and Takeovers Act 1975 (CTH) (FATA)*; or
 - (2) where the purchase is a notifiable action under the FATA the Buyer has obtained any and all approvals.

18. Encumbrance

The Property is sold free of Encumbrances and Tenancies except as notified in Items 18.1 and 19 (But subject to all reservations in favour of the Crown).

19. Further Acts

Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.

20. Inspection (Pre Settlement)

On giving of reasonable notice to the Seller, the Buyer and/or designated representative may, at reasonable times prior to Settlement, inspect the Property for the purposes of:

- (1) inspections in accordance with Clause 4;
- (2) valuation, if required (under Clause 5 or otherwise);
- (3) reading of the water meter;
- (4) one pre-settlement inspection in addition to Clauses 20(1) and 20(2);
- (5) survey in accordance with Clause 25; and
- (6) obtaining a quote for installation of smoke alarms in accordance with Clause 8.16.

21. Interest on Unpaid monies

Any monies payable under this Contract, (or any judgment given in respect of this Contract) not paid when due, will attract Interest from the due date to the date of payment at the rate prescribed in Item 21 and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

22. Lot Use

22.1 As far as the Seller is aware, the Present Use of the Property is legal but the Seller gives no warranty in respect thereof.

22.2 If at the Date of Contract:

- (1) under the Local Authority planning provisions the Present Use is unlawful; or
- (2) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise (including Transport Infrastructure and notice of intention to resume), with respect to the Lot or adjoining land will materially adversely affect the Property; or
- (3) the Lot and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST; or
- (4) the Lot or part of it is declared as acquisition land under the *Queensland Reconstruction Authority Act 2011*,

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Property.

23. Planning/Building Notices

Should there be outstanding Notices at the Date of Contract under:

- (1) sections 166 (show cause notice) or 167 (enforcement notice) of the *Planning Act 2016*; or
- (2) sections 246AG affecting the Lot (show cause notice - cancellation), 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

24. Possession Prior to Settlement

24.1 Should possession be given before the Settlement Date set out in Item 12 it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.

24.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a license only.

- 24.3 The Buyer accepts the Property in the condition it is in at the date of possession.
- 24.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.
- 24.5 The Buyer must not part with possession of the Property.
- 24.6 Occupation of the Property shall be at the Buyer's risk.
- 24.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.
- 24.8 The Buyer will adequately insure the Property in both the Buyer's and Seller's names.

25. Property Survey

The Buyer may inspect the Property and in so doing cause a survey to be made of the Lot and fixed and permanent structures thereon and should there be an error or misdescription with respect to the dimensions of the Lot or an encroachment onto or from the Lot the Buyer:

- (1) may in the case of an error, misdescription or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement; or
- (2) in the case of an error, misdescription, or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, must complete the purchase in accordance with the terms of this Contract.

Should the Contract be terminated in accordance with Clause 25(1), all monies by way of Deposit shall be refunded to the Buyer.

26. Property Description

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer:

- (1) may in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement; and
- (2) in the case of an error or misdescription, either of which are immaterial, must complete the purchase in accordance with the terms of the Contract.

Should the Contract be terminated in accordance with Clause 26(1), all monies by way of Deposit shall be refunded to the Buyer.

27. Compensation

Where the Buyer elects to complete under Clause 25(1) or 26(1) or must complete under Clause 25(2) or 26(2):

- (1) the Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only; and
- (2) any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

28. Property Information

- 28.1 The Seller must, if requested by the Buyer, at a reasonable time prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those referred to in Clauses 12.4(3) and 12.4(7).
- 28.2 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities including body corporate and obtain any necessary certificates relating to the Land and/or Lot and chattels if any included in this sale.

29. Requisitions

The Buyer is not entitled to deliver requisitions on title.

30. Rights After Settlement

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

31. Risk

From 5:00pm AEST on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller remains in possession of the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (as provided in Clause 11).

32. Special Conditions

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions and the Special Condition, the Special Condition shall apply.

33. Stamp Duty

Payment of stamp duty on this Contract is the responsibility of the Buyer.

Note: The Buyer may incur penalties if stamp duty is not paid within 30 days of the conditions of this Contract being satisfied.

34. Time

- 34.1 Time shall be of the essence. Settlement must take place (Subject to Clause 12.3):

- (1) in the case of e-conveyance, at any time on the Settlement Date in accordance with Clause 12.1(7); or
- (2) otherwise at any time between the hours specified in Clause 12.2(2) of this Contract.

- 34.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

35. Work Orders

- 35.1 (1) The Seller must, by Settlement, comply with any Work Orders affecting the Property:
- (a) issued on or before the Date of Contract; or
 - (b) requiring compliance by Settlement.
- (2) Provided however, where, at the date of this Contract, the Lot is subject to an Order under Chapter 3 of the NDRA and notice has been given in accordance with Section 83 of the NDRA, the provisions of Clause 35.1(1)(a) will not apply.
- (3) The Buyer must comply with any Work Orders issued after the Date of Contract, except where action by the Seller, unauthorised by the Buyer, has given rise to or resulted in such Work Order.
- (4) Where a Work Order is issued after the Date of Contract and is required to be complied with before Settlement, the provisions of Clause 35.1(1)(b) will apply, provided that any costs incurred by the Seller in carrying out the Work Order will be payable by the Buyer as an Adjustment in accordance with Clause 35.5.
- 35.2 The Seller will promptly provide the Buyer with copies of all Work Orders received after the Date of Contract.
- 35.3 Should the Buyer direct the Seller not to expend monies or carry out the works required by such Work Orders, the Buyer will indemnify the Seller against any claims in respect thereof.
- 35.4 Subject to the Seller having complied with section 83 of the NDRA, the Buyer must comply with any Work Orders affecting the Property issued subsequent to the Date of Contract that require compliance after Settlement.

- 35.5 Costs incurred by one party in complying with any Work Order which, under Clause 35.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.
- 35.6 No contribution will be payable by the Seller with respect to construction or repair of any dividing fences between the Lot and any adjoining land unless under the NDRA a Notice to Contribute with respect to a dividing fence has been served on the Seller prior to the date of this Contract in which case compliance with such notice shall be the responsibility of the Seller.
- 35.7 Where the Seller has not by Settlement complied with Clause 35.1(1) or 35.6 and no adjustment has been made to the Purchase Price to compensate for such noncompliance, the Buyer may recover as a debt from the Seller, the costs incurred by the Buyer in effecting such compliance.
- 35.8 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item 20.
- 35.9 Where, at the date of this Contract, the Lot is subject to an Application or Order under Chapter 3 of the NDRA and notice has been given in accordance with Section 83 of the NDRA, the Buyer acknowledges, on entering into this Contract:
- (1) the Buyer will be joined as a party to proceedings relating to the Application; and
 - (2) on Settlement, will be bound by the Order to the extent the Seller has not carried out the work required under the Order.
- 36. Seller's Agent**
If an Agent has been appointed by the Seller as outlined in Item 2 to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.
- 37. Severability**
Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Contract to be void, illegal or unenforceable by law, that term, provision or obligation must be read down to the extent possible or removed from the Contract whilst keeping the operation of the remainder of the Contract in effect.
- 38. Related Documents / Notices / Electronic Communication**
- 38.1 The parties agree and confirm any documents and communications in relation to this Contract may be forwarded electronically and where this Contract has been forwarded electronically (either for signing or otherwise) the party receiving the Contract confirms having consented to the delivery of the Contract (and any other materials) by way of the electronic means of delivery before receiving the documentation. This confirmation includes documents forwarded prior to the execution of this Contract.
- 38.2 A Related Document to be served on any party under this Contract 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 Contract; 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 Contract; or
 - (4) by electronic communication to the party at the appropriate electronic address as stated in this Contract; or
 - (5) by delivery to the other party's solicitor's office; or
 - (6) by delivery of an Electronically Signed document to an Electronic Workspace opened in accordance with Clause 12.1; or
 - (7) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 38.2(1) to (5) above.
- 38.3 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.
- 38.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- 38.5 Documents given by the party's solicitor will be deemed to have been given by and with the authority of the party.
- 38.6 Documents must be served before 5:00pm AEST on a Business Day, failing which, such document will be deemed to have been served on the next Business Day.
- 38.7 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.
- 38.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.
- 38.9 Where a party signs this Contract electronically that party's signature is not required to be witnessed.
- 39. Execution and Confirmations**
- 39.1 By signing this Contract, the parties acknowledge:
- (1) having received a copy for perusal prior to signing; and
 - (2) being provided with the opportunity to obtain independent legal advice.
- 39.2 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.
- 39.3 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a copy of that Contract) and transmitting a copy of it to the other or to the other party's Agent or Solicitor.
- 40. Applicable Law**
The laws of Queensland are the laws applicable to this Contract.
- 41. Privacy**
- 41.1 The Agent for either party to this Contract must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.
- 41.2 The Privacy Policy outlines how Agents collect and use Personal Information provided by you (all parties) as a party to this Contract, or obtained by other means, to provide the services required by you or on your behalf.
- 41.3 You as a party to this Contract agree Agents may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to third parties as may be required by the Agent for the purposes of facilitating electronic conveyancing, 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.
- 41.4 Without provision of certain information your Agent may not be able to act effectively or at all on your behalf.
- 41.5 You as party to this Contract have the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.
- 41.6 An Agent will provide (where applicable), on request, a copy of its Privacy Policy.

42. Data Collection

Upon signing this Contract the parties agree the Agent for either party to this Contract, 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 Contract.

43. Materially Adverse Event

43.1 Where a party to this Contract (Relevant Party) is unable to reasonably carry out an Essential Obligation due to a Materially Adverse Event (MAE) then for the Relevant Period of the MAE the parties agree time will cease to be of the essence and a failure by a party to perform its obligations during the Relevant Period will not be a breach of the contract.

43.2 The Relevant Party must:

- (1) promptly when able notify the other party of the MAE and how it prevents performance of a particular Essential Obligation;
- (2) take reasonable steps to mitigate the effect of the MAE with respect to its obligations; and
- (3) as soon as possible, give notice advising when it is no longer prevented from carrying out the Essential Obligation. Such notice may also include the matters detailed in Clause 43.3.

43.3 At the end of the Relevant Period, or where a notice served in accordance with Clause 43.2(3) does not contain the matters set out in paragraphs (1) to (4) of this sub-clause, either party may serve notice on the other party:

- (1) advising that the Relevant Period/MAE is over;
- (2) requiring performance of or compliance with the Essential Obligation;
- (3) giving a specific time and date for the performance or compliance being not less than 7 days and not more than 14 days from the date of delivery of the notice; and
- (4) advising that, on delivery of the notice, time is again of the essence,

such notice will be a settlement notice where the particular Essential Obligation notified in accordance with Clause 43.2(1) relates to settlement.

43.4 The times and dates for compliance with other contractual obligations where time is of the essence shall be extended to correspond with the extension of time to the Essential Obligation originally notified.

43.5 For the purposes of this Clause 43:

- (1) *Essential Obligation* means any one of the obligations set out in Clauses 3.1, 4.1, 4.4, 4.7, 5, 9.1, 11.2, 12.1, 12.2, 12.4 and 25;
- (2) *Materially Adverse Event* or *MAE* means:
 - (a) an event as defined in section 16(1)(a) of the *Disaster Management Act 2003 (QLD)*; or
 - (b) an order or lawful direction of a Government authority, Federal, State or Local;
- (3) *Relevant Party* means a party to this Contract prevented from carrying out an Essential Obligation as the direct result of a Materially Adverse Event for the Relevant Period; and
- (4) *Relevant Period* means the time during which a Relevant Party is unable to carry out an Essential Obligation as a consequence of a Materially Adverse Event.

44. Withholding - Capital Gains

44.1 The parties acknowledge (subject to Clause 44.2), where the Purchase Price of the Property is seven hundred and fifty thousand dollars (\$750,000) or more, the Buyer will on or before Settlement, in compliance with the foreign resident capital gains withholding payments provisions of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* (Schedule 1) be required to:

- (1) withhold from the purchase monies a sum equal to 12.5% of the Purchase Price or such lesser sum as determined in a notice of variation provided in accordance with section 14-235 of Schedule 1;
- (2) pay the withheld monies to the Australian Taxation Office (ATO) in accordance with Schedule 1 and, in addition;
- (3) promptly provide evidence of payment made in accordance with Clause 44.1(2) to the Seller.

44.2 (1) The Buyer's obligation under Clause 44.1 will not apply where:

- (a) the Seller provides to the Buyer, a clearance certificate from the ATO in accordance with Schedule 1, valid at the time of Settlement; or
- (b) the Seller is a mortgagee exercising a power of sale; and
 - (i) the residue payable to the mortgagee after payment of sale costs and mortgage debt is zero or less than zero; and
 - (ii) the mortgagee provides a written declaration to the Buyer, in accordance with Schedule 1, that the amount to withhold is varied to nil.

(2) Where the Seller provides a certificate under Clause 44.2(1)(a) or a declaration under Clause 44.2(1)(b), such notice must be provided not less than 3 Business Days (or such shorter time as the parties may agree) prior to Settlement.

44.3 Payment made in accordance with Clause 44.1 is to be made from the purchase monies, but shall not be in addition to the Purchase Price.