

AVANT
TOWNHOMES

Avant Townhomes

Your first choice for contemporary living

Contract of Sale
TOWNHOME

LOT No:

AT

QUAY2
TORQUAY

NOTICE TO PURCHASERS OF PROPERTY OFF-THE-PLAN

Off-the-plan sales (Section 9AA(1A) of the *Sale of Land Act 1962*)

- You may negotiate with the vendor about the amount of the deposit moneys payable under the contract of sale, up to 10 per cent of the purchase price.
- The value of the lot may change between the day on which you sign the contract of sale of that lot and the day on which you become the registered proprietor.
- A substantial period of time may elapse between the day on which you sign the contract of sale and the day on which you become the registered proprietor of the lot.

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period

Section 31

Sale of Land Act 1962

You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent **written** notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more) if you end the contract in this way.

EXCEPTIONS

The 3-day cooling-off period does not apply if—

1. you bought the property at or within 3 clear business days before or after a publicly advertised auction; or
2. the property is used primarily for industrial or commercial purposes; or
3. the property is more than 20 hectares in size and is used primarily for farming; or
4. you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
5. you are an estate agent or a corporate body.

Contract of Sale

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the—

- Particulars of sale; and
- Special conditions, if any; and
- General conditions; and
- Vendor's Statement

and in that order of priority.

The Vendor's Statement required by section 32(1) of the *Sale of Land Act 1962* is attached to and forms part of the terms of this contract.

SIGNING OF THIS CONTRACT

WARNING: THIS IS A LEGALLY BINDING AGREEMENT. YOU SHOULD READ THIS CONTRACT BEFORE SIGNING IT.

Purchasers should ensure that prior to signing this contract they have received:

- a copy of the full terms of this contract.
- a copy of the statement required to be given pursuant to section 32d of the *Sale of Land Act 1962* Vic

The authority of a person signing—

- under power of attorney; or
- as director of a corporation; or
- as an agent authorised in writing by one of the parties

must be noted beneath the signature.

Any person whose signature is secured by an estate agent acknowledges being given by the agent at the time of signing a copy of the terms of this contract.



Contract of Sale

SIGNED BY THE PURCHASER

on / /2018

If Purchaser is an individual

.....
Signature of Purchaser

.....
Signature of witness

.....
Print Name of Purchaser

.....
Print name of witness

.....
Nature of authority (if applicable eg attorney under power of attorney)

If Purchaser us a company

EXECUTED by [] in accordance with section 127 of the Corporations Act:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

This offer by the Purchaser is irrevocable for 10 clear Business Days from the date the Purchaser signs this Contract



Contract of Sale

SIGNED BY THE VENDOR

on / /2018

Executed for and on behalf of **Hume Torquay Pty Ltd ACN 609 789 737** by its attorney or Maxwell Shifman who declares that he has no notice of the revocation of the power of attorney pursuant to which he was appointed

.....
Signature

The **DAY OF SALE** is the date this contract is signed by both parties.



Contract of Sale

Purchaser's Confirmation	The Purchaser declares that		
	<input type="checkbox"/>	they are entering into this Contract and intend to purchase as owner occupier	
	<input type="checkbox"/>	they are entering into this Contract and intend to purchase the Property as an investor	
FIRB (Special Condition 23)	<input type="checkbox"/>	FIRB Approval is required for the purchase of the Property by the Purchaser AND the Purchaser has obtained that approval or	
	A1		
	<input type="checkbox"/>	FIRB Approval is not required for the purchase of the Property by the Purchaser or	
	A2		
	<input type="checkbox"/>	FIRB Approval is required for the purchase of the Property by the Purchaser BUT the Purchaser has not yet obtained that approval	
	A3		
Land	Certificate of Title	being Lot(s)	Proposed plan of subdivision
	Part of the land in Certificate of Title Volume ##### Folio ###		PS#####
Property	The Land together with any improvements to be constructed on the Land in accordance with this Contract and situated in the Project known as Quay 2, Torquay, Vic 3228		
Goods	The Goods described in the Plans and Specifications and the items as selected by the Purchaser in the Customisation Schedule		
Payment	Base Price	\$	
	Customisation Selections	\$	
	Price	\$ _____	
	Deposit	\$ _____	10% of which \$ _____ has been paid and the balance is payable by _____
	Balance	\$ _____	



Contract of Sale

Payment of Balance	The later of: (i) the date that is 14 days after the Vendor’s written notification of the Registration by the Registrar of Titles of the Plan of Subdivision; and (ii) the date that is 14 days after the Vendor’s written notification of the issue of the Occupancy Permit
Settlement	Is the date upon which vacant possession of the Property must be provided, namely, upon acceptance of title and payment of the full purchase Price
GST	The price includes GST (if any) unless the words Plus GST appear in this box <input type="checkbox"/> Price includes GST The Margin Scheme will or may be used to calculate GST, if the words Margin Scheme appear in this box <input type="checkbox"/> Margin Scheme

CUSTOMISATION SCHEDULE



Contract of Sale

SPECIAL CONDITIONS

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SPECIAL CONDITIONS

1. DEFINITION AND INTERPRETATIONS

1.1 Definitions

In this Contract, unless the context clearly indicates otherwise

- (a) words and expressions defined in the Particulars of Sale and not otherwise defined in Special Condition 1.1 have the meaning given in the Particulars of Sale; and
- (b) the following words and expressions have the following meanings:

Annexure means an annexure to this Contract;

Approval means any permit, approval, authority for, consent or licence;

ATO means the Australian Taxation Office;

Authority/Authorities mean Federal, State or Local Government, statutory bodies or other authorities exercising statutory powers, duties or authorities;

Bank means an Australian owned bank as defined and registered under the *Banking Act 1959* (Cth);

Building Act means the *Building Act 1993* (Vic) as amended;

Builder means a person who is registered as a builder pursuant to the Building Act;

Buildings means the buildings and improvements to be constructed on the Subdivision Land;

Business Day means a day on which trading banks are open for business in the city of Melbourne other than a Saturday or Sunday;

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgement however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Colour Scheme means the colour scheme as referred to in the Customisation Schedule that is selected or deemed to be selected by the Purchaser;

Common Property means common property on the Plan of Subdivision;

Contract means this contract of sale of real estate and includes the annexures and schedules to this Contract;

Corporations Act means the *Corporations Act 2001* (Cth);

Cost means any cost, charge, expense, outgoings, payment, fee, liability or penalty of any kind including legal and professional costs;

Council means the local government body whose municipality may at any time include the Property;

Customisation Schedule means the customisation schedule after the Particulars of Sale;

Day of Sale means the date when both the Vendor and Purchaser have signed this Contract;

Deposit means the deposit specified in the Particulars of Sale;

Design Guidelines means the document entitled Quay 2 Guidelines, a copy of which is attached to the Vendor's Statement and includes any variations, additional or substitute guidelines made from time to time during the course of the Project;

Development means the building and improvements constructed or to be constructed on the Subdivision Land;

Due Date for Settlement means the date for Payment of the Balance described in the Particulars of Sale;

Duties Act means the *Duties Act 2000 (Vic)* as amended;

ECNL means the *Electronic Conveyancing National Law* under the Appendix to the *Electronic Conveyancing (Adoption of National Law) Act 2013 (Vic)*;

ELN means the Electronic Lodgement Network (as defined in the ECNL);

FATA means the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* as amended;

FIRB means the Foreign Investment Review Board or the Treasurer of the Commonwealth Government or any other persons administering any of the provisions of the FATA;

FIRB Approval means if the Purchaser is a Foreigner, confirmation from FIRB that FIRB has no objection to the purchase of the Property by the Purchaser;

Foreigner means a foreign person as defined in section 5 of FATA;

General Conditions means the general conditions as set out in part 2 of the standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008 (Vic)* as at 12 October 2014;

GST means GST within the meaning of the GST Law;

GST Amount means the amount of GST payable in respect of a Taxable Supply under or in connection with this Contract;

GST Law means A New Tax System (*Goods & Services*) *Tax Act 1999 (Cth)* and related rulings, rules, orders or requirements imposed by any body or Authority charged with the administration of a law imposing, levying, implementing or varying the GST or common law and includes any modification, re-enactment or substitution thereof;

Guarantee means the guarantee and indemnity contained in Annexure B;

Intrapac Group means related corporations or affiliated entities of the Vendor, including Intrapac Property Pty Ltd and related entities;

Land means the land described in the Particulars of Sale;

Law means any lawful requirement that relates to or affects the Land or its development or use whether that law or lawful requirement arises under statute, common law or pursuant to any act, statutory instrument, regulation, order, ordinance, by-law, notice or directive of any Authority or otherwise;

Lot means a lot on the Plan of Subdivision, either before or after Registration, or any lot in the Project as the context may require;

Loss means any loss, damage (including any injury) or cost of any kind;

Model Rules means the model rules for owners corporations prescribed in Schedule 2 of the OC Regulations or such other rules prescribed from time to time pursuant to the OC Regulations;

Margin Scheme means the basis on which GST is calculated under Division 75 of the GST Act;

Month means a calendar month;

OC Act means the *Owners Corporations Act 2006 (Vic)*;

OC Regulations means the *Owners Corporations Regulations 2007 (Vic)* as amended or any other regulations made from time to time dealing with matters relating to the owners corporations pursuant to the Subdivision Act or the OC Act;

OC Rules means the proposed rules for the Owners Corporation, a copy of which is attached to the Vendor's Statement and which subject to any amendments referred to in this Contract will be adopted as the rules of the Owners Corporation at the inaugural meeting of the Owners Corporation;

Occupancy Permit means an occupancy permit issued by a building surveyor or the Council or other authorised person under the Building Act in relation to the Building Works;

Outgoings means all outgoings and operating expenses relating to the Property including rates, taxes, assessments, levies and land tax;

Owners Corporation/OC means the owners corporation to be established on Registration of the Plan of Subdivision;

Particulars of Sale means the particulars of sale forming part of this Contract;

Planning and Environment Act means *Planning and Environment Act 1987 (Vic)*;

Planning Permit means the planning permit(s) to be issued for the subdivision and development of the Subdivision Land, a copy of which is attached to the Vendor's Statement;

Planning Scheme means the planning scheme applicable to the Project;

Plan of Subdivision or **Subdivision** means the proposed plan of subdivision referred to in the Land details in the Particulars of Sale;

Plans means the plans attached as Annexure D;

Price means the price specified in the Particulars of Sale;

Project means the subdivision, construction and development of the Site and the Land including subdivisional works, development of buildings and improvements on the Site and the Land including the development of dwellings, common property, public open spaces, road reserves and other facilities;

Project Planning Permit means the planning permit 12/0218 issued by the Council on 7 May 2013 for the Project;

Property means the property sold under this Contract being the Land described as such in the Particulars of Sale together with the improvements to be constructed on the Land as referred to in this Contract and the Goods;

Purchaser means the person so described in the Particulars of Sale or in the Contract and includes the Purchaser's successors and permitted assigns;

Purchaser's Legal Representative means the legal practitioner or conveyancer, if any, so described in the Particulars of Sale or such other legal practitioners or conveyancers as are notified from time to time to the Vendor's Legal Practitioner as being the legal practitioners or conveyancers of the Purchaser;

Purchaser's Rights means the Purchaser:

- (i) making requisitions;
- (ii) claiming compensation;
- (iii) rescinding or purporting to rescind;
- (iv) calling on the Vendor to amend title or bear any cost of doing so;
- (v) making any demand;
- (vi) withholding payment of the Price;
- (vii) delaying Settlement; or
- (viii) avoiding any of its obligations pursuant to this Contract.

Registrar means the Registrar of Titles;

Registration Date means the date that is 36 calendar months from the Day of Sale;

Registration or Registered means in relation to the Plan of Subdivision, the issue by the Registrar of a notice stating the registration of the Plan of Subdivision and the designation of separate title numbers for each Lot on the Plan of Subdivision;

Restrictions means the restrictions appearing in the Plan of Subdivision;

Sale of Land Act means the *Sale of Land Act 1962 (Vic)*, as amended;

Section 173 Agreement(s) means agreements registered pursuant to section 173 of the Planning and Environment Act registered on the certificate of title for the Subdivision Land and any other agreements that the Council or other Authorities may require that the Vendor enter into pursuant to section 173 of the Planning and Environment Act as referred to in Special Condition 9.4;

Settlement Date means the date Settlement of this Contract occurs;

Settlement means settlement and completion of this Contract as described in the Particulars of Sale;

Services means water, sewerage, drainage, gas and electricity, telephone or other installations, services and utilities;

Site means the land which the Vendor or a related entity is developing or subdividing and as referred to in the Project Planning Permit;

Special Condition means a special condition in this Contract;

Specifications means the specifications attached as Annexure E, the Colour Scheme and the items selected by the Purchaser in the Customisation Schedule;

SRO means the Victorian State Revenue Office;

Subdivision Act means the *Subdivision Act 1988 (Vic)*, as amended;

Subdivision Land means the land in the Plan of Subdivision;

Subdivisional Works means any filling, raising, levelling, packing or cutting of the Land including the installation or removal of sewers, water drainage pipes, pillars, pits, roads and works that the Vendor will arrange to be carried out in order for the Council to certify the Plan of Subdivision and issue a Statement of Compliance in relation to the Plan of Subdivision or in relation to any plans of subdivision relating to the Site;

Successors means any successor in title of the Vendor;

Titles Office means Land Use Victoria forming part of the Department of Environment, Land, Water and Planning;

Transfer of Land Act means the *Transfer of Land Act 1958 (Vic)*, as amended;

Transfer means the instrument of transfer referred to in Special Condition 15.4;

Vendor means the entity described in the Particulars of Sale or in the Contract and includes its transferees, Successors and permitted assigns;

Vendor's Legal Practitioner means the legal practitioner representing the Vendor, if any, described in the Particulars of Sale or such other legal practitioners as are notified from time to time to the Purchaser's Legal Representative as being the legal practitioner for the Vendor;

Vendor's Statement means the statement provided by the Vendor pursuant to Section 32 of the Sale of Land Act, a copy of which is attached; and

Works means the design and construction work in relation to the construction and development of the dwelling and any landscaping works on the Land.

1.2 Interpretation

- (a) This Contract is a contract deemed to be made and construed in and in accordance with the laws of the State of Victoria and each of the parties expressly submits to the jurisdiction of the Courts of Victoria.
- (b) Except to the extent that such an interpretation is excluded by or is repugnant to the context, a reference to any party includes its successors and permitted assigns, the word persons includes a corporation (and vice versa), words importing the singular includes the plural and vice versa, and words importing any gender include all other genders.
- (c) Headings and Special Condition headings have been inserted for guidance only and do not form part of the context of this Contract and are not to be taken into account when this Contract is interpreted.
- (d) Where any act matter or thing is required by this Contract to be performed or carried out on a certain day and that day is not a Business Day then that act matter or thing will be carried out or performed on the next following Business Day.
- (e) Reference to a statute or ordinance includes all regulations under and all amendments to that statute or ordinance whether by subsequent statute or otherwise, and a statute or ordinance passed in substitution for the statute or ordinance referred to, or incorporating any of its provisions.
- (f) Any covenant obligations or undertaking on the part of two or more persons contained in this Contract binds them jointly and each of them severally.
- (g) In the event of any Special Condition or part or portion of a Special Condition or part of this Contract being or becoming void or unenforceable or being illegal then that offending part will be severed from this Contract to the intent that all parts that will not be or become void or unenforceable or illegal will remain in full force and effect and be unaffected by such severance.

- (h) Each party hereto will execute and deliver all such documents instruments and writings and will do and will procure to be done all such acts and things necessary or desirable or reasonable to give effect to this Contract.
- (i) Any provision of this Contract which is capable of taking effect after completion of this Contract will not merge on completion but rather will continue in full force and effect.
- (j) No waiver of any breach of this Contract or of any of the terms of this Contract will be effective unless that waiver is in writing and is signed by the party against whom the waiver is claimed. No waiver of any breach will operate as a waiver of any breach or subsequent breach.
- (k) Unless otherwise clearly indicated in this Contract, all monetary amounts are expressed in Australian dollars (\$).

1.3 Giving effect to Contract

- (a) In the event of a conflict between the Special Conditions and the General Conditions, the order of priority is:
 - (i) the Special Conditions; then
 - (ii) the General Conditions.
- (b) The terms of this Contract prevail over the terms in any earlier contract.

1.4 Variation

This Contract cannot be varied except by a later written document executed by all parties or if the parties agree, by an exchange of correspondence between the Vendor's Legal Practitioner and the Purchaser's Legal Practitioner.

1.5 Counterpart

This Contract may be executed in a number of counterparts. All counterparts taken together constitute one instrument.

1.6 Time for doing acts

If any act or thing required to be done is done after 5.00pm on that specified day, it has been taken to be done on the following Business Day.

2. AMENDMENT OF GENERAL CONDITIONS

- (a) The General Conditions apply to this Contract as amended by Special Conditions 2(b) and 2(c).
- (b) The following General Conditions are amended as set out in this Special Condition 2(b):
 - (i) all references to vendor in the General Conditions are deemed to be to the Vendor as defined in Special Condition 1.1;

- (ii) all references to purchaser in the General Conditions are deemed to be to the Purchaser as defined in Special Condition 1.1;
 - (iii) all references to property in the General Conditions are deemed to be to the Property as defined in Special Condition 1.1;
 - (iv) all references to land in the General Conditions are deemed to be a reference to the Land as described in the Particulars of Sale;
 - (v) General Condition 10.3 is amended by replacing 4:00pm with 3:00pm;
 - (vi) General Condition 12.1(a)(ii) is amended by deletion of the figures and words 80% of in paragraph (ii); and
 - (vii) General Condition 12.4 is added to the General Conditions as follows:

Where the purchaser is deemed by section 27(7) of the Sale of Land Act 1962 to have given the deposit release authorisation referred to in section 27(1), the purchaser is also deemed to have accepted title in the absence of any prior express objection to title.
- (c) The following General Conditions do not apply to this Contract:
- (i) General Condition 6 – Transfer
 - (ii) General Condition 11 – Payment
 - (iii) General Condition 13 – GST
 - (iv) General Condition 14 – Loan
 - (v) General Condition 17 –Service
 - (vi) General Condition 18 – Nominee
 - (vii) General Condition 20 – Guarantee
 - (viii) General Condition 22 – Inspection
 - (ix) General Conditions 24.4-24.6 inclusive – Loss or damage before settlement
 - (x) General Condition 26 – Interest.

3. GENERAL PROVISIONS

3.1 Entire agreement

- (a) The Purchaser acknowledges and agrees that:
 - (i) the covenants and provisions contained in this Contract comprises the whole of the agreement between the parties and it is expressly agreed and declared that no further or other covenants or provisions whether in respect of the Land (or any part) or the

Project or otherwise will be deemed to be implied in this Contract or to arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by any party to another party on or prior to the execution of this Contract and the existence of any such implication or collateral or other agreement is hereby expressly negated and cancelled; and

- (ii) no servant or agent of the Vendor or consultant or professional adviser or other person on behalf of the Vendor has made or has had any authority to make any representation, warranty, arrangement, condition, statement or agreement binding on the Vendor, which is not embodied in this Contract.
- (b) Without limiting Special Condition 3.1(a), the Purchaser further acknowledges that the information contained in any brochure, model or any promotional material in relation to the Project is a guide only and does not constitute a warranty, representation, inducement, offer or contract.
- (c) The Purchaser acknowledges and agrees that the Purchaser has entered into this Contract on the basis of his, her or its own investigations and enquiries.

3.2 Receipt of Contract and Vendor's Statement

The Purchaser acknowledges that prior to the execution of this Contract or any other document legally binding upon the Purchaser, he, she or it received a copy of this Contract and the Vendor's Statement.

3.3 Personal Information

- (a) For the purposes of this Special Condition, "Personal Information" means any information or opinion (including when forming part of a database), recorded in material form or not, about a natural person whose identity is apparent and can reasonably be ascertained from the information or opinion.
- (b) The Purchaser consents to the Vendor using or disclosing Personal Information about the Purchaser:
 - (i) to the Intrapac Group;
 - (ii) for the purpose of exercising the rights and complying with the obligations of the Vendor under this Contract;
 - (iii) to surveyors, engineers, the Builder and other parties who are engaged by the Intrapac Group to carry out any works within the Site;
 - (iv) to service providers engaged by the Intrapac Group such as market research organisations, mail houses and delivery companies.

3.4 Confidentiality

The Purchaser acknowledges that the provisions of this Contract may be highly sensitive and that as a consequence the parties agree to treat this Contract with absolute confidence and will not disclose any terms or provisions of this Contract to any other person or persons without first obtaining the written consent of the other party. This Special Condition 3.4 will not however prevent the Purchaser from disclosing aspects of the Contract in order to obtain any finance needed to purchase the Property or for the provision and obtaining of professional advice.

4. NOTICES

- (a) Any demand or notice given by any party under or in connection with this Contract may be given or received by the legal practitioner for that party and must be:
 - (i) in writing; and
 - (ii) hand delivered, sent by prepaid post or transmitted by email or facsimile to the recipient's address as detailed in the Particulars of Sale or varied by notice.
- (b) A notice given in accordance with this Special Condition is taken as having been served:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post:
 - (A) within Australia, on the 2nd Business Day after posting; or
 - (B) to or from a place outside Australia, on the 7th Business Day after posting;
 - (iii) if sent by email, on successful transmission of the entire notice or demand; or
 - (iv) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice or demand.
- (c) If the delivery pursuant to Special Conditions 4(b)(iii) or 4(b)(iv) is not on a Business Day or after 5:00pm on a Business Day (recipient's time), the notice is taken to have been received on the next Business Day.
- (d) Except where original documents are required at Settlement or by Law, the Vendor may give documents or provide information to the Purchaser or the Purchaser's Legal Practitioner by Electronic Transmission to the recipient's email address as detailed in the Particulars of Sale (or as varied by notice).
- (e) The Purchaser must within 10 Business Days of the Day of Sale provide the Vendor with its email address and that of its legal practitioner and must notify the Vendor of any changes to these email addresses or that of any nominee from time to time.
- (f) For the purposes of Special Condition 4(d) **Electronic Transmission** means the giving of a document by the Vendor to the Purchaser by:

- (i) transmitting the document by email; or
- (ii) transmitting, by email, notification that the document is given together with a hyperlink at which the document can be viewed and downloaded or the web address where the document can be viewed and downloaded.

5. DEPOSIT

5.1 Payment of Deposit

- (a) The Deposit must not exceed 10% of the Price.
- (b) The Deposit must be paid to the Vendor's Legal Practitioner or a licensed estate agent appointed by the Vendor to be held by the Vendor's Legal Practitioner or the Vendor's licensed estate agent on trust for the Purchaser until Registration of the Plan of Subdivision.
- (c) The Deposit will at all times be held and dealt with in accordance with section 9AA of the Sale of Land Act and this Contract.
- (d) Upon Registration of the Plan of Subdivision, the Vendor's Legal Practitioner will hold the deposit monies as stakeholder pursuant to the provisions of Section 24 of the Sale of Land Act.

5.2 Investment of Deposit

- (a) The parties hereby authorise and appoint:
 - (i) the Vendor's Legal Practitioner to open a controlled money bank account which may be used for the investment or holding of the Deposit in accordance with the terms of this Contract and the Sale of Land Act; and
 - (ii) the Vendor's Legal Practitioner to hold, lodge or invest the Deposit with any Bank of the Vendor's choosing.
- (b) If the Deposit is invested in accordance with Special Condition 5.2, then any interest accruing on the Deposit from the date of payment to the date of settlement or release (less costs, duties, withholding tax and expenses incurred in connection therewith) must be paid to the party who is entitled to the Deposit pursuant to the provisions of this Contract.
- (c) Each party must within 7 days of the Day of Sale provide the Vendor's Legal Practitioner its tax file number in writing.
- (d) Each party authorises the Vendor's Legal Practitioner to give its tax file number to the Bank with which the Deposit is invested.
- (e) The Vendor's Legal Practitioner is not required to invest the Deposit in accordance with this Special Condition if it is not provided with the tax file number of the Purchaser.

5.3 Vendor's rights if Deposit not paid

- (a) If the Deposit is not paid on the date set out in the Particulars of Sale (**Due Date**), then the Vendor may:
 - (i) terminate this Contract by notice in writing to the Purchaser that it is terminating this Contract pursuant to this Special Condition 5.3 and General Condition 27.1 will not apply to such notice and this Contract will be immediately at an end on the Vendor serving such notice, without prejudice to the Vendor's rights pursuant to General Condition 28.4; or
 - (ii) elect not to terminate this Contract and sue the Purchaser for the unpaid Deposit.
- (b) The Purchaser will have no claim against the Vendor for compensation if the Vendor terminates the Contract pursuant to Special Condition 5.3(a)(i).
- (c) If the Vendor terminates this Contract pursuant to Special Condition 5.3(a)(i) any part deposit paid by the Purchaser will be forfeited to the Vendor.
- (d) Without limiting the Vendor's rights pursuant to Special Condition 5.3(a), interest will be payable on the Deposit if it is not paid on the Due Date calculated in accordance with Special Condition 24.1 from the Due Date until the date the Deposit is paid.

6. BANK GUARANTEE PROVIDED AS SECURITY FOR DEPOSIT

6.1 Provision of Bank Guarantee

If the Vendor has agreed, subject to the provisions in this Special Condition 6, the Purchaser may provide a bank guarantee issued by a Bank (**Bank Guarantee**) as security for the Deposit or part of the Deposit.

6.2 Amount of Bank Guarantee

The amount of the Bank Guarantee (**Bank Guarantee Amount**) together with any part payment of the Deposit by the Purchaser must not exceed 10% of the Price.

6.3 Requirements for Bank Guarantee

In order for the Vendor to accept a Bank Guarantee it must be:

- (a) provided to the Vendor's Legal Practitioner no later than the date specified in the Particulars of Sale for payment of the Deposit;
- (b) irrevocable and unconditional;
- (c) addressed to and in favour of the Vendor's Legal Practitioner;
- (d) issued by a Bank;

- (e) without a termination date or if it has a termination date, the termination date must not be prior to 6 months after the Registration Date; and
- (f) in a form acceptable to the Vendor in its absolute discretion.

6.4 Failure to provide Bank Guarantee

If:

- (a) a Bank Guarantee complying with Special Condition 6.3 is not provided; or
- (b) the Deposit is not paid,

the rights of the Vendor set out in Special Condition 5.3 will apply

6.5 Purchaser's Obligations

The Purchaser acknowledges and agrees that if the Vendor accepts a Bank Guarantee from the Purchaser:

- (a) the Bank Guarantee Amount must be paid on the Settlement Date or, if the Vendor rescinds this Contract due to a breach of the Purchaser, immediately upon termination of this Contract; and
- (b) if the Vendor rescinds this Contract, the Vendor's Legal Practitioner may immediately call upon the Bank Guarantee, and without prejudice to other rights of the Vendor, the amount paid to the Vendor's Legal Practitioner on calling on the Bank Guarantee will be forfeited to the Vendor in accordance with General Condition 28.4 of this Contract.

6.6 Return of Bank Guarantee

The Vendor will return the Bank Guarantee to the Purchaser upon the Purchaser paying the Bank Guarantee Amount, the Balance and all other monies payable by the Purchaser under this Contract on the Settlement Date.

6.7 Replacement Bank Guarantee

- (a) If the term of the Bank Guarantee will expire prior to the Due Date for Settlement, the Purchaser must by no later than 60 days prior to the expiry date of the Bank Guarantee:
 - (i) pay the Bank Guarantee Amount to the Vendor's Legal Practitioner by bank cheque to be held in accordance with Special Condition 5;
 - (ii) provide a replacement Bank Guarantee to the Vendor's Legal Practitioner in a form acceptable to the Vendor's Legal Practitioner with a termination date approved by the Vendor; or
 - (iii) provide evidence to the Vendor's Legal Practitioner that is satisfactory to the Vendor that the term of the Bank Guarantee has been extended by a period that is acceptable to the Vendor.

- (b) If the Purchaser does not comply with its obligations pursuant to Special Condition 6.7(a), the Vendor's Legal Practitioner may make a claim on the Bank Guarantee and the amount paid to the Vendor's Legal Practitioner will be held and dealt with in accordance with the provisions of Special Condition 5 and the Sale of Land Act.
- (c) If:
- (i) the Bank Guarantee is for any reason unenforceable by the Vendor; or
 - (ii) the Vendor becomes dissatisfied with the Bank Guarantee; or
 - (iii) the Vendor's financier is not satisfied with the Bank Guarantee; or
 - (iv) if it becomes apparent to the Vendor that the Bank or financial institution or other entity that provided the Bank Guarantee does not have the funds to pay the Vendor's Legal Practitioner under the Bank Guarantee,
- the Purchaser will within 7 days of the Vendor notifying the Purchaser that the Bank Guarantee is unacceptable for the reasons specified in this Special Condition 6.7(c), provide to the Vendor's Legal Practitioner a replacement Bank Guarantee in a form acceptable to the Vendor or pay the Deposit.
- (d) If this Contract is assigned or novated to a third party as provided in Special Condition 20, the Purchaser must within 30 days of being requested to do so, do whatever is necessary to give that third party's legal practitioner the benefit of the Bank Guarantee provided by the Purchaser under this Special Condition 6 including if necessary delivering a new replacement Bank Guarantee in favour of the third party's legal practitioner.
- (e) If at any time the identity of the Vendor's Legal Practitioner changes, the Purchaser must within 14 days of a request, procure the issuing of a replacement Bank Guarantee in favour of the new Vendor's Legal Practitioner at which time the original Bank Guarantee provided by the Purchaser will be returned.
- (f) Failure by the Purchaser to comply with Special Conditions 6.7(b), (c), (d) or (e) is a breach of a fundamental term of this Contract.

7. PURCHASER'S ACKNOWLEDGMENTS IN RELATION TO THE LAND AND PROPERTY

7.1 Admission of Identity of Land

The Purchaser admits that the Land has been inspected by it and is identical with that described in the title particulars and the Plan of Subdivision.

7.2 Measurements

The Purchaser acknowledges and agrees that:

- (a) any dimensions denoted on the Plans, brochures and promotional materials are nominal and subject to change;

- (b) floor areas where provided have been completed in accordance with the method of measurement for residential properties published by the Property Council of Australia and are current as at the Day of Sale; and
- (c) the title boundaries of the Land are as shown and defined on the Plan of Subdivision; and
- (d) areas measured in accordance with Special Conditions 7.2(b) and 7.2(c) may differ.

7.3 Purchaser's acknowledgment

The Purchaser acknowledges and agrees that the Purchaser has entered into this Contract on the basis of its own investigations and enquiry and subject to the Purchaser's rights pursuant to the Sale of Land Act, the Purchaser will not exercise the Purchaser's Rights in relation to any discrepancy between the dimensions of the Property in Plans, brochures and promotional materials from the Plan of Subdivision due to the different methodology of determining measurements.

8. ENVIRONMENTAL LIABILITY

8.1 Definitions

In this Special Condition, the following terms have the following meanings, unless the context indicates otherwise:

- (a) **Contamination** means anything (including a liquid, solid, gas, odour, temperature, sound or vibration) which makes or may make the Land not comply with the Environmental Law and **Contaminated** and **Contaminant** have corresponding meanings;
- (b) **Environmental Law** means a law regulating or relating to the environment;
- (c) **Environmental Liability** means any Cost or Loss which is incurred or arises as a consequence of Contamination of the Land or any Contaminated emanating from or onto the Land;
- (d) **Statement of Environmental Audit** means the statement of environmental obtained by the Vendor as required by the Project Planning Permit, a copy of which is attached to the Vendor's Statement;

8.2 Purchaser's acknowledgments

- (a) The Purchaser acknowledges and agrees that:
 - (i) the Land may be Contaminated;
 - (ii) the Vendor may be required to undertake investigative and remedial works to satisfy the requirements of the Project Planning Permit and any requirements in the Planning Permit; and
 - (iii) the Vendor has obtained the Statement of Environmental Audit
- (b) Subject to the Vendor's obligations pursuant to Special Condition 8.2, from the earlier of:

- (i) the date the Purchaser first commences occupation of the Property; and
 - (ii) the Settlement Date,
- the Purchaser:
- (iii) assumes liability and responsibility for Environmental Liability; and
 - (iv) releases the Vendor and their officers and agents from any Claims or Loss arising from:
 - (A) any Environmental Liability in relation to any contaminant or contamination that is on the Subdivision Land or has emanated from or onto the Subdivision Land; and
 - (B) any Contamination in, on or under the Subdivision Land which has emanated onto or from the Land caused or contributed to or exacerbated by the Purchaser or its servants, agents, employees and contractors.

9. ENCUMBRANCES, RESTRICTIONS AND PLANNING

9.1 Encumbrances

- (a) The Purchaser buys the Property subject to:
 - (i) the encumbrances described in the Vendor's Statement and those referred to in this Contract;
 - (ii) provisions of the Subdivision Act and to conditions implied by the Registration of the Plan of Subdivision and in particular subject to:
 - (A) the Lot liability and Lot entitlement in the Plan of Subdivision;
 - (B) the OC Regulations;
 - (C) the Model Rules and the OC Rules (to the extent applicable);
 - (D) the Restrictions;
 - (E) the Section 173 Agreements;
 - (F) the easements expressed or implied which affect the Lot hereby sold as described on the Plan of Subdivision or which arise by virtue of the Subdivision Act;
 - (iii) any reservations under any instrument, order, plan, scheme, regulation or by-law made by any Authority empowered by any legislation to control the use of the Subdivision Land; and
 - (iv) any easements, reservations or like encumbrances affecting the Property.
- (b) The Purchaser acknowledges that:

- (i) sewers, drains or other services may lay outside registered easements; and
- (ii) the Property may be subject to unregistered easements in relation to pipes, connections or structures of service supply Authorities or others which may not have been disclosed to the Vendor and which may not be apparent from an inspection of the Property.

9.2 Planning

The Purchaser buys the Property subject to any Laws, restrictions or conditions imposed on the Land by or with the authority of any Authority, any applicable planning scheme or any other scheme, the Planning Permit and the Project Planning Permit.

9.3 Further Encumbrances and Restrictions

- (a) The Purchaser acknowledges and understands that on the Day of Sale:
 - (i) there have not been created all the easements, restrictions on use and positive covenants; and
 - (ii) all rights and privileges may not have been created or granted,which may be necessary or desirable for any Authority, or the Vendor to create, enter into, grant or dedicate.
- (b) If it is considered necessary or desirable for an Authority or the Vendor to, the Vendor or an Authority will:
 - (i) create easements, restrictions on use or positive covenants; or
 - (ii) grant rights or privileges,then subject to the Purchaser's rights pursuant to the SLA, the Purchaser will not exercise the Purchaser's Rights in respect of any matter relating to such creation, entry into, grant or dedication.

9.4 Section 173 Agreement

- (a) Without limiting Special Condition 9.1, the Purchaser acknowledges and understands that:
 - (i) the Council and other Authorities may require the Vendor to enter into Section 173 Agreements in addition to the Section 173 Agreements referred to in the Vendor's Statement;
 - (ii) the Vendor currently has no knowledge or notice of what the actual terms, wording and conditions of any further Section 173 Agreements and what they will provide;
 - (iii) any further Section 173 Agreements may contain covenants and conditions which will be binding on the Purchaser and the Purchaser's successors in title; and

- (iv) the Purchaser hereby consents and authorises the Vendor to enter into such agreements in whatever form the Council or other Authorities may require, to enable registration of the Plan of Subdivision or as a condition of their approval of the Development.
- (b) The Purchaser will not exercise the Purchaser's Rights in respect of any matter relating to any Section 173 Agreement or the terms and conditions of any further Section 173 Agreement.
- (c) The Vendor will, after it has entered into any Section 173 Agreement provide a copy of same to the Purchaser, upon being requested to do so by the Purchaser.

9.5 Embedded Network System

- (a) Without limiting Special Condition 9.1(b):
 - (i) the Vendor may include in the Development an embedded network system for the supply of one or more utility services in relation to the Lots and Common Property;
 - (ii) the Vendor may install service, wires, cables, conduits and pipe shafts under or within any of the Property, the Land or the Common Property or the Subdivision Land in relation to the embedded network system.
- (b) The Vendor or the Owners Corporation may enter into agreements required to give effect to the embedded network system.
- (c) The Purchaser consents to any necessary easements, leases or licences that may need to be granted or entered into by the Vendor or the Owners Corporation in relation to the embedded network system.
- (d) The Purchaser will not exercise the Purchaser's Rights to any matter relating to the embedded network system.

10. PLAN OF SUBDIVISION

10.1 Registration of Plan of Subdivision

- (a) The Property is a Lot on the Plan of Subdivision which has not been registered. The Vendor will without delay and at its own expense use its best endeavours to have the Plan of Subdivision registered by the Registrar pursuant to Part 4 of the Subdivision Act by the Registration Date.
- (b) If the Plan of Subdivision is not Registered by the Registration Date, for any reason whatsoever, either party may, at any time after the Registration Date but before the Plan of Subdivision is Registered, rescind and end this Contract by giving written notice to the other in which case the Deposit and all other moneys paid by the Purchaser pursuant to this Contract will be refunded to the Purchaser but without any compensation, costs or interest save for the interest referred to in Special Condition 5 of this Contract. The Vendor's obligation under Special Condition 10.1(a) will come to an end if the Plan of Subdivision is not Registered by the Registration Date and the Vendor elects to rescind the Contract as provided.

10.2 Plan of Subdivision Amendments

- (a) The Vendor will have the right to make any amendments or alterations to the Plan of Subdivision it deems appropriate or which are required to obtain Registration and the Purchaser will not be entitled to exercise the Purchaser's Rights on the grounds that the Plan of Subdivision as Registered does not accord with the Plan of Subdivision included in the Vendor's Statement provided that this Special Condition 10.2 does not extend to any amendments or alterations which:
- (i) materially affects the Property (as referred to in Section 9AC of the Sale of Land Act); or
 - (ii) restrict or limit the use of the Lot, other than an amendment resulting from the recommendation of a public authority or a government department (as referred to in Section 10 of the Sale of Land Act);

and which amendment was made without the Purchaser's written consent.

- (b) Without limiting the generality of Special Condition 10.2(a), the Purchaser is not entitled to exercise the Purchaser's rights in respect of:
- (i) any variations to the Plan of Subdivision regarding the Property that are not of a material nature;
 - (ii) minor variations to the Plan of Subdivision required to accord with surveying, architectural or engineering practice or requirements or objectives of the Vendor;
 - (iii) minor variations to the Plan of Subdivision to meet the requirements or requisitions of any Authorities or the Registrar to effect Registration;
 - (iv) minor variations to the Restrictions;
 - (v) the inclusion of the Restrictions in a memorandum of common provisions;
 - (vi) the consolidation of any of the Lots on the Plan of Subdivision to form one lot prior to Registration; and
 - (vii) any alteration to the size, shape and location of the Lots on the Plan of Subdivision provided that this does not extend to any variation to the Lot comprising the Property, so that the Lot's area is decreased by more than 5% in total area.

10.3 Restrictions

The Purchasers acknowledges and agrees that:

- (a) due to the requirements of the Titles Office, the Restrictions may be required to be set out in a memorandum of common provision which will apply to the Plan of Subdivision and/or the instrument of transfer transferring the Property to the Purchaser will refer to the memorandum of common provision as being applicable to the Property;

- (b) the Purchaser will do all things reasonably required and provide all necessary consents for the Restrictions to be set out in a memorandum of common provisions which will apply to the Plan of Subdivision and/or for the instrument of transfer of the Property to refer to the memorandum of common provisions as being applicable to the Property;
- (c) the Purchaser will not exercise the Purchaser's Rights in respect of any matter relating to the Restrictions being including in a memorandum of common provision and the application of the Restrictions to the Property or any other Lot in the Plan of Subdivision.

10.4 Easements

It is agreed by the Vendor and Purchaser that Section 10(1) of the Sale of Land Act will not apply in relation to the location of easements and the Purchaser will not be entitled to exercise the Purchaser's Rights as a consequence of any change or alteration to the final location and size of any easements that may need to be created over the Land or on the Plan of Subdivision. The Vendor is entitled to amend the Plan of Subdivision without reference to the Purchaser where such amendment is with respect to the location and size of any easements over the Land.

10.5 Works to Natural Surface Level and Fill

- (a) The Purchaser acknowledges and agrees the Development and Plans require works that will affect the natural surface level of the Land by the excavation required for the footings and the Buildings as shown on the Plans.
- (b) The Purchaser acknowledges and agrees to the Vendor arranging for works to be carried out to the Land and/or any surrounding land as may be required by the Council or any other relevant Authority.
- (c) The Purchaser will not exercise the Purchaser's Rights in relation to the quality or condition of the Land (and the soil) and any change or alteration between the Purchaser's first inspection of the Land and at the Settlement Date.
- (d) The Purchaser will not exercise the Purchaser's Rights in relation to any ground filling which may be on the Land or surrounding land as at the Settlement Date.

10.6 No Caveat

- (a) The Purchaser will not prior to settlement itself lodge or allow any person claiming through the Purchaser or acting on behalf of the Purchaser to lodge pursuant to Section 89 of the Transfer of Land Act any caveat over or with respect to the Land or the Subdivision Land.
- (b) The Purchaser acknowledges that lodging a caveat in breach of Special Condition 10.6(a) may delay and prevent the Registration of the Plan of Subdivision and/or delay settlement. If a caveat is lodged by the Purchaser or by anyone claiming through the Purchaser in breach of Special Condition 10.6, then the Purchaser will be liable for and will upon demand by the Vendor pay to the Vendor any interest, holding costs or other expenses that the Vendor may incur from the date of lodgement of the caveat to the date of its removal.

- (c) The Purchaser indemnifies and keeps indemnified the Vendor against any loss or damage of whatsoever nature or kind whether foreseeable or not which the Vendor may suffer or incur as a consequence of any breach by the Purchaser of this provision.
- (d) The Vendor's rights pursuant to this Special Condition 10.6 will be in addition to any other rights the Vendor may have under this Contract as a consequence of the Purchaser's breach of Special Condition 10.6. This Special Condition 10.6 is an essential term of this Contract.

11. BUILDING WORKS

11.1 Definitions

In this Special Condition, the following terms have the following meanings unless the context indicates otherwise:

- (a) **DBCA** means the Domestic Building Contracts Act 1995 (Vic);
- (b) **Defects** means any error, omission or defect in the Building Works due to faulty workmanship or materials which affects the Property, and which the Vendor or Builder are required to rectify at Law;
- (c) **Defect Rectification Period** means the period of 12 months commencing on the date on which the Occupancy Permit issues; and
- (d) **Domestic Building Contract** means a building contract complying with the DBCA;

11.2 Building Contract

- (a) The Purchaser acknowledges and understands that:
 - (i) the Vendor is not the Builder or a builder as defined by the DBCA; and
 - (ii) this Contract is not a building contract to which the DBCA applies.
- (b) The Purchaser further acknowledges and agrees that:
 - (i) this Contract is subject to and conditional upon the Vendor entering into a Domestic Building Contract with a registered Builder for the Building Works and as a consequence, the Purchaser will be entitled to the benefits of the warranties under Sections 8 and 9 of the DBCA; and
 - (ii) this Contract has been entered into pursuant to Section 137E(a) of the Building Act.
- (c) The Vendor will provide to the Purchaser at or prior to Settlement a copy of the certificate of builder's warranty insurance provided by the Builder in relation to the Building Works complying with the requirements of the DBCA.

11.3 Building Works

- (a) The Builder will at the Vendor's own cost, carry out the Works in accordance with the lawful requirements of all authorities having jurisdiction over the Works or the Property.
- (b) The Vendor will use its best endeavours to have the Builder complete the Works substantially in accordance with the Plans and Specifications as expeditiously as possible but the Vendor will not in any case or circumstance be liable to the Purchaser in any way whatsoever for any delays experienced in the completion of the Works.
- (c) The Colour Scheme to apply to the Works is to be selected by the Purchaser in the Customisation Schedule on signing the Contract. If a Colour Scheme has not been selected by the Purchaser in the Customisation Schedule the light Colour Scheme will apply.

11.4 Completion

The Works will be deemed to have been completed as required by this Contract upon the Vendor providing the Purchaser or the Purchaser's Legal Representative a copy of an Occupancy Permit in respect of the Property or that includes the Property.

11.5 Variations

- (a) The Purchaser acknowledges that the information set out in the Plans and Specifications is correct as at the Day of Sale and some of the fixtures, fittings and finishes may not be available from or may become unavailable.
- (b) The Vendor is entitled without reference to the Purchaser to make any non-material alterations to the Works that the Vendor deems:
 - (i) desirable or necessary; or
 - (ii) in order to ensure that the Works comply with the requirements of all Authorities having jurisdiction over the Works or the Property;
 - (iii) as a consequence of the unavailability of or unreasonable increase in price of or failure to meet Vendor's standards of any item, fixture, fitting or product referred to the Plans and Specifications, provided that in making any change to the Plans and Specifications will use an item, fixture, fitting or product of equal or similar quality and standard.

11.6 Natural Product and Finish

The Purchaser acknowledges and agrees that some of the natural materials used by the Builder including, but not limited to, timber and stone may contain naturally occurring or inherent flaws or variations in colouring or in the grain. The Purchaser is not entitled to exercise the Purchaser Rights at settlement due to such natural inherent flaws or variations.

11.7 Display Home

The Purchaser also acknowledges and accepts that:

- (a) a display suite (if any) inspected by the Purchaser is not a display home as defined by the DBCA and the purpose of the display suite is to show the general nature and style of building works relevant to the Works;
- (b) the display suite is not a representation of what the Works will be on completion; and
- (c) the Purchaser will not exercise the Purchaser's Rights in respect of any matter relating to the display suite.

11.8 Rectification of Defects

- (a) The Vendor will as soon as practicable procure the rectification of any Defects which are notified to the Vendor during the Defects Rectification Period provided that:
 - (i) the Purchaser gives the Vendor, the Builder and their agents and contractors access to the Property at all reasonable times (including Monday to Friday from 8am to 6pm) to enable the inspection of any alleged Defects and carry out any necessary defect rectification works;
 - (ii) despite any Defects, the Purchaser must pay the Balance on the Due Date for Settlement and is not entitled to withhold any portion of the balance due to Defects; and
 - (iii) the Vendor is not required to procure the rectification of any Defects prior to the Due Date for Settlement.
- (b) The Vendor's obligations in relation to Special Condition 11.8(a) do not apply to any anything that could have been caused by the Purchaser or anyone in the Property with the Purchaser's authority.

11.9 Manufacturer's Warranties

On and from the Settlement Date, the Vendor to the extent that it is able to, assigns to the Purchaser the benefit of any manufacturer's warranties held by the Vendor.

11.10 Disputes

- (a) If there is a dispute between the Vendor and the Purchaser in relation to any matters in relation to in this Special Condition 11 .
 - (i) the Purchaser may not exercise the Purchaser's Rights; and
 - (ii) either party may refer the dispute for resolution in accordance with this Special Condition 11.10.
- (b) If a dispute arises in relation to any matters referred to in Special Condition 11.10, either party may give written notice of the dispute to the other party. The notice must state that it is a dispute in accordance with this Special Condition 11.10 and must specify the dispute concerned (Notice).

- (c) If a dispute which is the subject of the Notice is not settled by agreement between the parties within 5 Business Days of service of the Notice, then the dispute is to be referred to an independent expert who must be agreed upon by the parties and if no agreement can be reached by the Chairman of the Institute of Arbitrators (Victorian Chapter) or his nominee who will nominate and appoint an independent expert who must have experience in the relevant field of the dispute.
- (d) The independent expert shall deliver a determination supported by reasons and in doing so is deemed to act as an expert and not as an arbitrator.
- (e) The independent expert's fees will be borne equally by the parties.
- (f) The independent expert's decision is final and binding on the parties.

12. SERVICES

12.1 Connection and Activation of Services

- (a) The Purchaser acknowledges that:
 - (i) water, sewerage, gas and electricity will be connected to the Property; and
 - (ii) activation of all Services connected to the Property will be the responsibility of Purchaser
 - (iii) If the Vendor arranges for activation of services for the Purchaser prior to Settlement, the Purchaser will reimburse the Vendor the cost by way of adjustment at Settlement.
- (b) The Purchaser acknowledges that:
 - (i) reticulated recycled water may be available to the Land; and
 - (ii) the uses to which recycled water may be put may be limited or directed by the relevant Authority.
- (c) The Purchaser will not exercise any Purchaser's Rights in respect of any matter referred to in this Special Condition.

12.2 Service Supply Agreements

The Purchaser acknowledges that the Vendor or a person nominated by the Vendor may enter into service supply agreements with Service suppliers in respect of the supply of and sale of gas, electricity, telecommunications and other services to the Development on fair and reasonable terms and in compliance with all applicable Laws and regulations.

12.3 Telecommunications

- (a) The Vendor will provide a conduit from the Property to a telecommunication service provider's connection pit on the site.

- (b) At or near Settlement, the Purchaser will establish an account with the telecommunications service provider who will then install the connection.

13. OWNERS CORPORATION

13.1 Purchaser's Acknowledgements

The Purchaser acknowledges and understands that:

- (a) the Plan of Subdivision will create the Owners Corporation;
- (b) the Property will be a part of or a member of the Owners Corporation;
- (c) the Owners Corporation schedule contained within the Plan of Subdivision sets out what the Property's liability and entitlement is in the Owners Corporation;
- (d) all Lots in the Plan of Subdivision are included in and will be part of the Owners Corporation;
- (e) the Owners Corporation will be responsible for the management and administration of the Common Property as identified on the Plan of Subdivision;
- (f) the Purchaser will be required to pay fees and levies to the Owners Corporation;
- (g) from Settlement the Purchaser will be entitled to vote at meetings of the Owners Corporation;
and
- (h) the Owners Corporation will have the power conferred by the OC Act and the OC Regulations in relation to its management and administration of the Common Property.

13.2 Establishment of Owners Corporation

The Purchaser consents to and authorises and requests the Vendor to as soon as practicable after the Registration of the Plan of Subdivision and before Settlement to attend to the establishment of the Owners Corporation and cause the Owners Corporation to:

- (a) hold its first meeting in accordance with the requirements of Part 4, Division 1 of the OC Act;
- (b) appoint, for a term of up to 3 years, the OC Manager who is a manager registered in accordance with the OC Act and to also appoint the OC Manager as the delegate for the Owners Corporation and in so doing delegate all permitted powers to the OC Manager under the OC Act;
- (c) determine, in consultation with the OC Manager, what the Owners Corporation fees or levies will be for the Owners Corporation;
- (d) insure in the name of the Owners Corporation the Common Property and the Buildings for an adequate and proper amount (which the Vendor will determine) and take out public risk insurance in relation to the Common Property with a reputable insurer and complying with the requirements of the OC Act;

- (e) if the Plan of Subdivision is staged pass such resolutions necessary for:
- (f) insurance arrangements for the subsequent stage or stages as development; and
- (g) for the budget to be modified as the subsequent stages are developed;
- (h) pass such resolutions necessary for the Owners Corporation Rules to be adopted by the Owners Corporation;
- (i) pass any necessary resolutions in relation to the establishment of the register in respect of the Owners Corporation in accordance with the OC Act;
- (j) pass any necessary resolutions in relation to the establishment of a committee in respect of the Owners Corporation in accordance with the OC Act;
- (k) pass any necessary resolutions in relation to any embedded network system; and
- (l) pass any resolution necessary in relation to any service supply agreements to be entered into.

13.3 Owners Corporation Fees

The Purchaser acknowledges and understands that the Owners Corporation fees once determined by the Owners Corporation will be payable from and/or commence on such date as the Vendor will determine.

13.4 Owners Corporation Certificate

The Vendor will provide to the Purchaser an Owners Corporation Certificate in accordance with section 151 of the OC Act prior to Settlement.

13.5 Rules

The Purchaser acknowledges and agrees that the Purchaser:

- (a) will be bound by the Model Rules to the extent that the relevant matter is not included in the Owners Corporation Rules and the OC Rules;
- (b) hereby consents to the OC Rules and authorises the Vendor and/or the Owners Corporation to do all that is necessary to pass the OC Rules and to have them registered with the Registrar of Titles either at the time the Plan of Subdivision is lodged for Registration or sometime thereafter, as provided by the Subdivision Act; and
- (c) authorises and consents to the Vendor or the Owners Corporation to make any amendments to the OC Rules as the Vendor believes necessary for the better management of the Owners Corporation or the Development before or after the OC Rules are registered and will within 7 days of receiving a request from the Vendor sign all necessary consents or authorities required in respect of the adoption of any amended OC.

13.6 Vendor's Rights

- (a) The Purchaser acknowledges and agrees that, while the Vendor is the registered proprietor or occupier of any part or parts of the Subdivision Land:
 - (i) the Purchaser will not vote at any Owners Corporation meeting or ballot to change or revoke an OC Rule unless it has first obtained the written consent of the Vendor;
 - (ii) the Purchaser will not agree to, or vote to enter into, any lease or licence in respect of the Common Property unless it has first obtained the written consent of the Vendor;
 - (iii) the Purchaser will not vote in favour of any resolution which gives rise to any levy or special charge, other than as required in the ordinary course of good and proper management of the Owners Corporation, unless it has first obtained the written consent of the Vendor; and
 - (iv) the Purchaser must not do any act or thing pertaining to, or which in any way relates to, the management, administration or running of any Owners Corporation of which the Purchaser is a member which is contrary to any term or condition of this Contract.
- (b) The Purchaser agrees that so long as the Vendor is registered as the proprietor of any part of the Subdivision Land, the Purchaser must not, without the written consent of the Vendor:
 - (i) amend or permit the Owners Corporations to amend, add to, or repeal any of the schedules to the Plan of Subdivision, or the Rules of an Owners Corporation;
 - (ii) lease or permit the Owners Corporations to lease, dispose of, or grant any right over the Common Property, or cast any vote in favour of the same; or
 - (iii) exercise any of the rights, powers and privileges granted or accruing to the members of an Owners Corporation in any way prejudicial rights of the Vendor pursuant to this Contract.

13.7 Obligations do not merge on Settlement

The Purchaser acknowledges and agrees that its obligations pursuant to Special Condition 13.6 do not merge on Settlement and will bind the Purchaser and the Purchaser's successors in title and whilst the Vendor is owner of any part of the Subdivision Land the Purchaser will ensure that it is a condition of any sale, transfer or disposition of the Property that the purchaser, transferee or assignee and their successors in title agree to be bound by the obligations in Special Condition 13.6.

13.8 No exercise of Purchaser's Rights

The Purchaser will not exercise any Purchaser's Rights in respect of any matter relating to the Owners Corporation and any of the matters as referred to in this Special Condition 13.

14. ACTIVITIES AND DEALINGS WITH SITE

Marketing and Selling Activities

- (a) The Purchaser acknowledges and understands that both before and after the Settlement Date:
 - (i) the Vendor and persons authorised by the Vendor are entitled to and may conduct marketing, leasing and selling activities in and on the Project in respect of the unsold Lots in the Plan of Subdivision and the Project in such a manner as the Vendor may in its sole discretion determine; and
 - (ii) may place and maintain in, on and about the Project (excluding the Property) signs in connection with those marketing, leasing and selling activities.
- (b) The Purchaser further acknowledges and understands that the Vendor intends using or may in the future determine to use one or more Lots for the marketing and selling of any unsold Lots in the Development and the Purchaser consents to the Vendor so doing.

14.2 Continuing Works

- (a) The Purchaser acknowledges and understands that:
 - (i) there will be continuing surveying, engineering and construction works on the Subdivision Land in respect to any of the Lots on the Plan of Subdivision and lots in the Project other than the Property;
 - (ii) the Vendor, the Builder or any other builder, tradesperson or consultant engaged by the Vendor may need to access the Site or any buildings or any part of the Site including the Subdivision Land after the Settlement Date and the Purchaser hereby grants to the Vendor, the Builder or any other builder, tradesperson or consultant engaged by the Vendor, an irrevocable right of access to the Site including the Subdivision Land and the Common Property (apart from the Land) after Settlement for those purposes;
 - (iii) the Vendor, the Builder or any builder, tradesperson or consultant engaged by the Vendor may need access to the Property after the Settlement Date to carry out rectification and repair works to the Development or to another Lot on the Plan of Subdivision and the Purchaser will grant to the Vendor, the Builder or any other builder, tradesperson, or consultant engaged by the Vendor access to the Property for these purposes when reasonably required and subject to prior notice being provided to the Purchaser; and
 - (iv) parts of the Common Property may be required to be closed off or may not be available in order for the Vendor, the Builder or any other builder, tradesperson or consultant engaged to carry out continuing surveying engineering and construction works in relation to the Project.
- (b) The Purchaser agrees and undertakes not to:

- (i) object to the Builder or any other builder, tradesperson or consultant engaged by the Vendor from having access to the Property and the Development, including the Common Property for the purposes set out in Special Condition 14.2(a);
 - (ii) object to, hinder, prevent, obstruct or do any act or thing that may prevent or interfere with works being carried out by the Builder or any builder, tradesperson or consultant engaged by the Vendor and any inconvenience, nuisance, disruption, dust, noise, vibration, loss of amenity or discomfort that may arise from those works;
 - (iii) institute proceedings or claim any compensation for any matter arising in respect of works being carried out or any inconvenience, nuisance, disruption, dust, noise, vibration, loss of amenity or discomfort arising from those works; and
 - (iv) vote for any resolution proposed by the Owners Corporation, the passing of which would prohibit, curtail or inhibit the rights of the Vendor pursuant to this Special Condition 14.2.
- (c) The Purchaser acknowledges that this Special Condition 14.2 will not merge on Settlement and will continue to bind the Purchaser and the Purchaser's successors in title and any sale, transfer or disposition of the Property will include a condition whereby the purchaser, transferee or grantee and their successors agree to be bound by this Special Condition 14.2.

14.3 Completion of Project

- (a) The Purchaser acknowledges that:
 - (i) the Vendor may not have completed the Project prior to satisfying the conditions to enable Settlement to occur pursuant to this Contract;
 - (ii) works may be undertaken on other parts of the Site after Settlement which may affect the Property or any resident of the Property;
 - (iii) the other Lots in the Project may not be developed due to market, regulatory or other reasons;
 - (iv) during construction of any part of the Project, the Vendor or its employees, agents, contractors, consultants may use other Lots in the Project or parts of the Site for the purpose of:
 - (A) gaining full, free and uninterrupted access or egress to any part of the Site or other part of the Project or any adjoining land whether by foot or in vehicles or heavy machinery; or
 - (B) storage of building materials, vehicles, equipment or fill associated with the construction of any other part of the Project;
 - (v) easements, covenants or restrictions may be created or implied by the Subdivision Act or granted by the Vendor as provided for elsewhere in this Contract;

- (vi) Services may be constructed on or under the Site or the Project which may not be protected by the easements;
 - (vii) the Vendor or any Authority may incorporate sub-stations within the Project; and
 - (viii) any boundary on or within the Site or Project may not be fenced and any boundary fence or wall may not be on or within the boundary.
- (b) The Vendor may from time to time both before and after Settlement:
- (i) alter the area, dimension or layout of the Site or Project;
 - (ii) apply for variations to existing Approvals;
 - (iii) apply for variations in the time by which the development and use under existing Approvals must be commenced and completed; or
 - (iv) apply for any other necessary Approvals and the certification and registration of further plans of subdivision.
- (c) The Purchaser consents to:
- (i) all applications by the Vendor relating to Approvals pursuant to Special Condition 14.3(b); and
 - (ii) the methods used by the Vendor in its efforts to sell Lots in the Project, including without limitation, use of signs, use of roads, reserves and open space and the maintenance of display homes.
- (d) The Purchaser must sign such forms of consent as the Vendor may from time to time reasonably require.
- (e) The Purchaser appoints the Vendor as its attorney and agent for the purpose of signing and giving the Purchaser's consent in respect of the applications referred to in Special Condition 14.3(b).
- (f) Production of this Contract constitutes sufficient evidence of the Purchaser's consent and appointment of attorney pursuant to this Special Condition.
- (g) The Purchaser will not exercise the Purchaser's Rights in relation to any matter referred to in this Special Conditions.

14.4 Obligations do not merge

The Purchaser acknowledges and agrees that its obligations pursuant to this Special Condition do not merge at Settlement and will continue to bind the Purchaser's successors in title. The Purchaser will ensure that whilst the Vendor is still owner of any part of the Site, the Purchaser will ensure that it is a condition of any transfer, sale or disposition of the Property that the purchaser, transferee or assignee and their successors in title agree to be bound by the Purchaser's obligations pursuant to this Special Condition.

15. PRE-SETTLEMENT AND SETTLEMENT

15.1 No Re-sale by Purchaser

- (a) Except as provided in Special Condition 15.1, the Purchaser will not until the Purchaser has settled and completed this Contract:
 - (i) sell, transfer or assign its interest under this Contract or in any other way deal with the Property without the prior consent of the Vendor; or
 - (ii) advertise, market, publish in any way the fact that the Property is for sale or that the Purchaser wishes to dispose of or deal with their interest under the Contract or in any other way deal with the Property.
- (b) Without limiting Special Condition 15.1(a) any common law right of the Purchaser to nominate an additional or substitute purchaser is excluded from this Contract to the extent that it is not permitted pursuant to Special Condition 15.2.
- (c) For the purposes of Special Condition 15.1(a), assignment includes if the Purchaser is a corporation (excluding a corporation whose shares are listed on any stock exchange) a change in control of that corporation by:
 - (i) a transfer of a share or shares in the capital of the Purchaser is registered, recorded or entered in the Purchaser's books;
 - (ii) the beneficial interest in shares in the capital of the Purchaser is dealt with;
 - (iii) new shares in the capital of the Purchaser are issued; or
 - (iv) other action is taken or attempted,

having the effect that the shareholders of the Purchaser who, as at the date of this Contract beneficially held 51% or more or otherwise controlled, directly or indirectly:

 - (v) the voting rights at general meetings of the Purchaser;
 - (vi) the composition or the rights to control the composition of the Purchaser's board of directors or the management or policies of the Purchaser; or
 - (vii) the dividend or capital participation rights in the Purchaser,

hold or would hold less than 51% of those rights immediately following that action.

15.2 Nomination

- (a) In this Special Condition, the following terms have the following meanings, unless the context indicates otherwise:
 - (i) **Related Person** has the meaning given to that term in section 3 of the Duties Act and includes a Relative; and

- (ii) **Relative** has the meaning given to that term in section 3 of the Duties Act.
- (b) If the Contract provides that the Property is sold to a named Purchaser “and/or nominee” or similar words, the named Purchaser, subject to Special Condition 23.3(a) of this Contract, may nominate a substitute transferee or additional transferee provided that they comply with the requirements of this Special Condition 15.2.
- (c) In order to validly nominate an additional or substitute transferee, the additional or substitute transferee must be a Related Person of the Purchaser and, the Purchaser must provide the following documents no later than 14 days prior to the Due Date for Settlement:
 - (i) the nomination in the form attached as Annexure C (Nomination Notice) in duplicate with all information properly completed signed by the Purchaser and the Nominee; and
 - (ii) a Guarantee signed by all directors and principal shareholders of the nominee if the nominee is a corporation.
- (d) If the Margin Scheme will apply, the Vendor will sign and return one copy of the Nomination Notice to the Purchaser confirming its agreement to apply the Margin Scheme to calculate the GST payable in respect of the supply of the Property.
- (e) The Purchaser acknowledges and understands that notwithstanding the nomination of the substitute or additional transferee, the Purchaser remains liable to perform all of the obligations of the Purchaser under this Contract.
- (f) The Vendor nor its agents makes no warranty representation or promise as to whether any nomination is dutiable or non-dutiable and in all respects it is a matter for the Purchaser to determine and be informed as to the stamp duty consequences of any nomination.

15.3 Purchaser’s Inspection

- (a) The Purchaser acknowledges that the rights under General Condition 21 and General Condition 22 must be exercised at reasonable times with the Vendor’s prior consent.
- (b) The Purchaser acknowledges and agrees that due to occupational health and safety reasons, that only one inspection of the Property will be permitted prior to Settlement and that such inspection must be in accordance with a protocol established by the Vendor.
- (c) Without limiting Special Condition 15.3(b), the Purchaser acknowledges and agrees that such inspection will be:
 - (i) at the time and date nominated by the Vendor or a representative or agent of the Vendor; and
 - (ii) in the presence of the Vendor or a representative or agent of the Vendor.
- (d) The Purchaser will not exercise the Purchaser’s Rights in respect of any matter relating to the inspection process.

15.4 Delivery of Transfer

- (a) The Purchaser must deliver the instrument of transfer to the Vendor's Legal Practitioner at least 5 Business Days prior to the Due Date for Settlement.
- (b) If the Purchaser does not deliver the transfer to the Vendor's Legal Practitioner within the time frame prescribed by Special Condition 15.4(a), the Vendor will be entitled to extend the Due Date for Settlement for up to 5 Business Days (Extended Settlement Date) from receipt of the transfer by the Vendor's Legal Practitioner and the Purchaser will be required to pay interest calculated in accordance with Special Condition 24.1 from the Due Date for Settlement to the Extended Settlement Date.
- (c) If the Plan of Subdivision is not registered or the volume and folio number of the title/s to the Property is/are unknown at the time the transfer is delivered to the Vendor's Legal Practitioner, the volume and folio/s number of the Title/s will be left blank and will be completed by the Vendor or the Vendor's Legal Practitioner at or prior to settlement.
- (d) If Settlement occurs through an ELN, the reference to the instrument of transfer in this Special Condition is a reference to the instrument of transfer created in a digital work space by the Purchaser's Legal Practitioner.

15.5 Online Duties Form

- (a) In this Special Condition, **Online Duties Form** means the digital form introduced and imposed by the State Revenue Office for the purpose of assessment of duty on transfers of land or such the form prescribed by the SRO from time to time.
- (b) The Purchaser acknowledges it is anticipated that, at the Settlement Date, in order for duty on the Transfer to be assessed, the SRO may require any information which must be submitted to the SRO for that purpose, to be completed and signed online by both parties, and submitted to the SRO electronically by means of the Online Duties Form.
- (c) To ensure that the Online Duties Form is completed and signed in time for Settlement, the Purchaser must:
 - (i) notify the Vendor in writing no later than 10 Business Days prior to Settlement if it considers that the Purchaser will be entitled to the OTP Duty Concession as referred to in Special Condition 16.2(a);
 - (ii) populate the Online Duties Form with all the information which a purchaser must provide to the SRO (Transferee Information) within 2 Business Days of receiving an online invitation to do so; and
 - (iii) accept and/or sign the Online Duties Form within 2 Business Days of receiving an online invitation to do so.
- (d) The Purchaser must promptly notify the Vendor that the Purchaser has completed, and/or accepted and/or signed the Online Duties Form immediately after doing so.

- (e) If the Purchaser does not notify the Vendor in accordance with Special Condition 15.5(c)(i), the Vendor will prepare the Online Duties Form on the basis that the OTP Duty Concession as referred to in Special Condition 16.2(a) does not apply.
- (f) If the Purchaser fails to comply with Special Conditions 15.5(c)(ii) and 15.5(c)(iii), the Purchaser is in default under the Contract.
- (g) In addition to the Vendor's rights described elsewhere under this Contract, if the Purchaser breaches the Purchaser's obligations under Special Conditions 15.5(c)(ii) and 15.5(c)(iii):
 - (i) the Vendor may extend the Due Date of Settlement by the same number of days in which the Purchaser delays populating, or accepting and/or signing the Online Duties Form; and
 - (ii) the Purchaser is taken to have defaulted in payment of the Balance of the Price and must, at Settlement, pay interest under this Contract to the Vendor from the Due Date for Settlement until the Settlement Date calculated in accordance with Special Condition 24.1.
- (h) The Purchaser confirms and agrees that upon the Online Duties Form being populated with the Transferee Information, the Purchaser must not amend any of the Transferee Information without procuring the Vendor's prior written consent to do so.
- (i) The Purchaser acknowledges that the Purchaser is responsible for populating the Online Duties Form with accurate Transferee Information.
- (j) The Purchaser indemnifies and keeps the Vendor indemnified against any Loss or Claim that the Vendor suffers, incurs or is liable for as a result of the Purchaser providing incorrect Transferee Information or in relation to the Vendor completing the Online Duties Form on the basis of the Purchaser informing the Vendor that it is entitled to the OTP Duty Concession as referred to in Special Condition 16.

15.6 Adjustment of Outgoings - Land Not Separately Assessed

- (a) If the Property is not separately assessed in respect of any Outgoings then the apportionment or adjustment of those Outgoings for which the Property is liable (apart from land tax) will be apportioned between the Vendor and the Purchaser in the same proportion that the area of the Land bears to the area of the land in the assessment or the Subdivision Land as registered, as may be applicable.
- (b) The Purchaser acknowledges that the State Revenue Office may group all the Lots in the Plan of Subdivision and assess land tax against the Vendor in respect of the Property based upon the aggregate of the unimproved values of each Lot in the Plan of Subdivision.
- (c) Despite the fact that on a single holding basis no land tax may be assessable in relation to the Land, the Purchaser agrees that the amount of land tax to be apportioned between the Vendor and the Purchaser on Settlement will be calculated as follows:

- (i) by using the proportional amount of land tax attributable to the Property shown in the Vendor's land tax assessment for the year during which Settlement occurs (or where such assessment has not issued at Settlement, the proportional amount of land tax attributed to the Property shown in a certificate issued in respect of the Property under Section 105 of the *Land Tax Act 2005 (Vic)*); or
- (ii) where such an assessment or certificate is not available at Settlement, by using the following formula:

$$A = \frac{L \times U}{T}$$

Where:

A = land tax payable in respect of the Land;

L = land tax assessed in relation to land of which the Vendor is the owner and which includes the Land for the land tax assessment year in which Settlement occurs;

U = the area of the Land; and

T = the area of all the land subject to the land tax assessment for the land tax assessment year in which Settlement occurs

- (d) If any land tax or any other Outgoings are not due to be paid prior or on the Due Date for Settlement, the Vendor is not obliged to pay land tax or the other Outgoings prior to or at settlement. The Vendor undertakes to pay land tax or other Outgoings when due subject to the land tax or Outgoings being adjusted as set out in this Special Condition 15.6.
- (e) It is further agreed that the adjustment of Outgoings at settlement will be made on the basis that the Purchaser accepts the sole responsibility for all and any supplementary rates or such other rates, charges and like outgoings which may be levied after the Due Date for Settlement and the Vendor will not be obliged to adjust or be liable for any part thereof.
- (f) The Vendor will prepare and provide to the Purchaser the statement of adjustments and settlement statement prior to the Due Date for Settlement.

15.7 Settlement Requirements

- (a) The Purchaser must settle before 3.00pm on the Due Date for Settlement.
- (b) If the Purchaser does not comply with Special Condition 15.7(a), then the Purchaser is taken to be in default in payment of the Balance.
- (c) If required by the Vendor, the Purchaser must book Settlement through an online booking system set up by the Vendor's Legal Practitioner or the Vendor.
- (d) Settlement must take place at the offices of the Vendor's Legal Practitioner or at any other place they nominate, unless Settlement is effected in accordance with Special Condition 15.8.

- (e) Subject to Special Condition 15.8 at Settlement the Purchaser must pay all monies due to the Vendor by unendorsed bank cheques issued by a Bank and made in favour of the Vendor, the Vendor's Legal Practitioner or as either of them directs in writing.
- (f) There will be no limit on the number of bank cheques that the Vendor or Vendor's Legal Practitioner may require pursuant to Special Condition 15.7(e).
- (g) The Purchaser acknowledges and agrees that:
 - (i) the certificate of title may be an electronic title and accordingly a duplicate certificate of title will not be and is not required to be produced at settlement; and
 - (ii) if the certificate of title is an electronic certificate of title, the Vendor will lodge an administrative notice at the Titles Office making the electronic certificate of title available for dealings to be lodged following the settlement.

15.8 Electronic Settlement

- (a) In this Special Condition 15.8 unless the context indicates otherwise, the following terms have the following meaning:
 - (i) **Electronic Settlement** means Settlement of this Contract in accordance with Special Condition 15.8; and
 - (ii) **Electronic Workspace** means an electronic environment for the exchange of information, communications and notices between parties to the workspace, for the purposes of effecting electronic transactions in accordance with this Special Condition 15.8, the ECNL and any requirements of the ELN.
- (b) This Special Condition 15.8 only applies if:
 - (i) due to the requirements of Registrar, settlement of this Contract may only occur through an ELN; or
 - (ii) the Vendor makes an election by giving the Purchaser written notice prior to the Due Date for Settlement, that Settlement will be conducted electronically in accordance with the ECNL.
- (c) If this Special Condition 15.8 applies, each party must:
 - (i) be or engage a representative who is a subscriber for the purposes of the ECNL;
 - (ii) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage a subscriber for the purposes of the ECNL; and
 - (iii) conduct the transaction in accordance with the ECNL.
- (d) The Vendor will open the Electronic Workspace as soon as reasonably practicable. The inclusion of a specific date for Settlement in the Electronic Workspace is not itself a promise to settle on that date.

- (e) The inclusion of a specific date for Settlement in the Electronic Workspace and/or any online booking system or the Vendor that is later than the Due Date for Settlement, is not in itself an acceptance of or consent to an extension of the Due Date for Settlement.
- (f) The inclusion of a specific date for Settlement in the Electronic Workspace and/or any online booking system or the Vendor that is earlier than the Due Date for Settlement, is not in itself an acceptance of or consent to an earlier date for Settlement.
- (g) The parties agree to do all things reasonably necessary to effect an Electronic Settlement, including but not limited to:
 - (i) making any necessary variations to this Contract;
 - (ii) conducting Settlement in accordance with the requirements of:
 - (A) the operator of the ELN;
 - (B) the ECNL;
 - (C) the Vendor; and
 - (D) any other relevant law; and
 - (E) enabling the relevant documents to be lodged by means of the ELN in the form approved by the Registrar of Titles, on or before the Due Date for Settlement.
- (h) The parties' obligations under Special Condition 15.8 include but are not limited to using reasonable endeavours to compel their respective:
 - (i) financiers;
 - (ii) subscribers (within the meaning of the ECNL); and
 - (iii) any other relevant parties that are required to be a party to the ELN to effect Electronic Settlement,

to do all things reasonably necessary to effect Electronic Settlement.
- (i) The parties agree that:
 - (i) Electronic Settlement has occurred when the Electronic Workspace records that the exchange of funds or consideration between the parties (or their financial institutions) has occurred in accordance with the parties' instructions and this Contract; and
 - (ii) if Electronic Settlement does not occur on the Due Date for Settlement, the parties must do everything reasonably necessary to effect:
 - (A) Electronic Settlement on the next Business Day; or
 - (B) by mutual agreement, Settlement (by non-electronic means) as soon as reasonably practicable.

- (j) If an exchange of funds contemplated in special condition 15.8(i) does not occur in accordance with the parties' instructions, each party must do everything reasonably necessary to assist the other party in tracing and recovering any mistaken payment.
- (k) To the extent of any inconsistency, this Special Condition 15.8 has priority over any other Special Condition in this Contract.

15.9 Property And Goods

The Property and Goods sold under this Contract do not pass to the Purchaser until full payment is made of the Price and any other moneys payable under the Contract.

16. STAMP DUTY

16.1 Definitions

The following terms have the following meanings in this Special Condition, unless the context indicates otherwise:

- (a) **Construction Cost** means the cost of construction occurring on the Land after the Day of Sale calculated in accordance with the Revenue Ruling for the purposes of determining the duty payable on the transfer of the Property pursuant to Section 21 of the Duties Act if the Purchaser is entitled to the OTP Duty Concession;
- (b) **Land Value** means the value of the Land and improvements (if any) erected on the Land as at the Day of Sale (which includes non-deductible costs) calculated in accordance with the Revenue Ruling for the purpose of determining the duty payable on the transfer of the Property for the purposes of section 21 of the Duties Act if the off the plan concession is applicable;
- (c) **OTP Concession** the Off the Plan Stamp Duty Concession as provided by the Duties Act; and
- (d) **Revenue Ruling** means revenue ruling DA.048 (Duty concession for off the plan sales-land and building packages and refurbishments) and any other revenue ruling issued from time to time by the SRO in relation to the duty concession for off the plan sales which may supplement or vary that revenue ruling;

16.2 Stamp Duty and Off the Plan Concession

- (a) The Vendor makes no warranty or representation that any Off the Plan Stamp Duty Concession as provided by the Duties Act (**OTP Duty Concession**) will apply to this Contract or will be available to the Purchaser now or at the time of settlement. The Purchaser agrees and acknowledges that it has not entered into this Contract in the expectation of being entitled to the OTP Duty Concession or relying on the OTP Duty Concession being available now or at the Settlement.
- (b) If and only if the Purchaser qualifies for and is eligible to obtain an OTP Duty Concession, then and not otherwise and subject to Special Condition 16.2(d), Special Condition 16.2(c) may apply.

- (c) Subject to Special Condition 16.2(d), the Vendor and Purchaser acknowledge and agree that, for the purposes of section 21(3) of the Duties Act the Price will be apportioned between the Land Value and the Construction Cost in accordance with the Revenue Ruling as at the Day of Sale.
- (d) The Purchaser acknowledges and understands that any information given to the Purchaser by the Vendor or its agent in respect to the dutiable value of the Property under the Duties Act or as to the amount of stamp duty that may be payable by the Purchaser in respect to the Property (subject to Special Condition 16.2(a)), has only been provided on the following basis:
 - (i) as a guide or as an estimate only;
 - (ii) it has been determined on the basis of the provisions of the Duties Act and published rulings as at the Day of Sale;
 - (iii) it may be varied as a result of any rulings or directions of the Commissioner of the State Revenue or in the manner referred to in this Special Condition 16.2(d); and
 - (iv) it may be varied or changed by the Vendor once it has the actual facts and figures to determine the dutiable value and/or may be varied for any other reasons.
- (e) The Purchaser further acknowledges and agrees that neither the Vendor or anyone on its behalf will be deemed to have made any warranty to the Purchaser as to the stamp duty payable by the Purchaser in connection with the sale and transfer of the Property and that the Purchaser has made its own enquiries and investigations in that regard and has relied and relies on the results of its investigations and enquiries and on its own judgement.

16.3 Purchaser Liable for All Claims

The Purchaser further acknowledges and understands that the Purchaser will be liable to pay all stamp duty assessed in respect of this Contract and the transfer of land and will not exercise the Purchaser's Rights in respect of any matter relating to the stamp duty assessed in respect of the sale and the transfer of the Property.

16.4 Purchasers Buy In Equal Interests

- (a) If there is more than one Purchaser, it is the Purchasers' responsibility to ensure the Contract correctly records at the Day of Sale the proportions in which they are buying the Property (**proportions**).
- (b) If the proportions recorded in the transfer differ from those recorded in the Contract, it is the Purchaser's responsibility to pay any additional duty, which may be assessed as a result of the variation.
- (c) The Purchasers fully indemnify the Vendor, the Vendor's agent and the Vendor's Legal Practitioner against any claims or demands which may be made against any or all of them in relation to any additional duty payable as a result of the proportions in the transfer differing from those in this Contract.

- (d) This Special Condition 16.4 will not merge on Settlement.

17. GST

17.1 Payment of GST by Vendor

- (a) Unless the context indicates otherwise, words with capital letters in this Special Condition which are not defined in Special Condition 1.1 have the meaning given to that term in the GST Act.
- (b) The Purchaser acknowledges and understands that:
- (i) the Price is inclusive of any GST payable in respect of any Taxable Supply made by the Vendor under this Contract for which the Consideration is the Price; and
 - (ii) any other payments specified in the Contract to be paid, unless specified otherwise are exclusive of GST.
- (c) The Vendor and Purchaser agree that the Vendor will be adopting the Margin Scheme to calculate the GST in respect of the Taxable Supply for which the Consideration is the Price, except if the Vendor gives the Purchaser notice prior to settlement that the Margin Scheme will not apply.
- (d) If any payment or part payment (other than the Price) is made to a party for or in connection with a Taxable Supply, that party is also entitled to recover from the party making the payment, the GST Amount payable in relation to the taxable supply.
- (e) The GST Amount payable pursuant to Special Condition 17.1(d) must be paid when the relevant payment is due.
- (f) A party's right to recover GST does not merge at settlement.

17.2 GST Withholding

- (a) In this Special Condition, the following words have the following meaning, unless the context indicates otherwise:
- (i) **Commissioner** means the Commissioner of Taxation, Australian Taxation Office;
 - (ii) **GST Withholding Amount** means the amount payable to the Commissioner and determined pursuant to section 14-250 of the Withholding Law; and
 - (iii) **Withholding Law** means Schedule 1 to the *Taxation Administration Act 1953* (Cth)
- (b) In this Special Condition 17.2, words or expression that are defined or used in the Withholding Law, have the meaning given to them in the Withholding Law, unless the context suggest otherwise.

- (c) The Property qualifies as a residential premises (and the exceptions in section 14-252 (2) of the Withholding Law do not apply). The Vendor will before the Due Date for Settlement provide a written notice to the Purchaser stating:
- (i) that the Purchaser will be required to make a payment under section 14-250 of the Withholding Law in relating to the supply of the Property; and
 - (ii) the following information:
 - (A) the name and ABN of the Vendor;
 - (B) the GST Withholding Amount;
 - (C) when the GST Withholding Amount is required to be paid; and
 - (D) any other information required pursuant to the Withholding Law
- (d) The Purchaser must at least 5 Business Days before the Due Date for Settlement:
- (i) complete and submit to the ATO the “Form 1 GST Property Settlement Withholding Notification”;
 - (ii) give the Vendor a copy of the Form 1 with the Payment Reference Number and the Lodgement Reference Number; and
 - (iii) if not already provided, giving the following information for each Purchaser:
 - (A) their dates of birth in natural persons;
 - (B) their ABN if they have one;
 - (C) their tax file number if they have one; and
 - (D) their phone numbers.

this information is only provided to assist the Vendor to confirm that the GST Withholding Amount is credited to the Vendor’s GST obligations.
- (e) The Purchaser must comply with its obligations to pay the GST Withholding Amount by:
- (i) if this matter is settled using an ELN, including the Commissioner as the payee for the GST Withholding Amount; or
 - (ii) if this matter is not settled using an ELN:
 - (A) drawing a bank cheque for the GST Withholding Amount in favour of the Commissioner; and
 - (B) giving the Bank cheque to the Vendor’s Legal Practitioner at Settlement.

- (f) The Purchaser must complete and submit to the ATO, the “Form 2 GST Property Settlement Date Confirmation” at or immediately after Settlement and provide the Vendor with a copy of the ATO’s confirmation of receipt of the form.
- (g) The Purchaser acknowledges that section 16-30(3) of the Withholding Law provides that the arrangements in this Special Condition are sufficient compliance with the Purchaser’s obligations in relation to payment of the GST Withholding Amount.
- (h) Except as provided in this Special Condition 17.2, the rights and obligations of the parties under this Contract are unaffected, including (without limitation) any agreement to apply the margin scheme on the supply of the Property.
- (i) The Purchaser indemnifies the Vendor against all Loss that may be incurred by the Vendor arising from or in connection with a breach by the Purchaser of any part of this Special Condition 17.2.
- (j) The Purchaser acknowledges that if the Purchaser nominates an additional or substitute transferee as referred to in Special Condition 15.2, the notice to be given by the Vendor pursuant to Special Condition 17.2(c) will be provided to the additional or substitute transferee nominated.

18. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING TAX

18.1 Application of Special Condition

This Special Condition does not apply if the GST inclusive Price for the Property sold pursuant to this Contract is less than \$750,000.

18.2 Definitions

The following terms have the meanings in this Special Condition, unless the context indicates otherwise:

Clearance Certificate means a valid clearance certificate issued under section 14-220(1) of the Withholding Law;

Variation Notice means a valid notice issued under s14-235 of the Withholding Law;

Withholding Amount means:

- (a) the foreign resident capital gains withholding amount that the Purchaser must pay to the ATO to comply with obligations under the Withholding Law in respect of the Vendor and this Contract; and
- (b) the lesser amount specified in a Variation Notice given to the Vendor by the Purchaser; and

Withholding Law means Schedule 1 of the *Taxation Administration Act 1953* (Cth).

18.3 Notification by Vendor and Clearance Certificate

- (a) The Vendor must notify the Purchaser if the Vendor has applied for, but not received the Clearance Certificate or a Variation Notice.
- (b) If the Vendor intends to apply for a Clearance Certificate or a Variation Notice then the Vendor will:
 - (i) notify the Buyer when it makes the application;
 - (ii) give the Clearance Certificate or Variation Notice to the Purchaser as soon as practicable after it is received.

18.4 Procedure if a Withholding Amount is Payable

- (a) If a Vendor gives the Purchaser a Clearance Certificate before Settlement then Special Condition 18.4(b) does not apply.
- (b) If this Special Condition applies to a Vendor, then the Purchaser must, subject to Special Conditions 18.4(d) and 18.4(e):
 - (i) give a foreign resident capital gains withholding Vendor payment notification form to the ATO in form approved by the Vendor, acting reasonably and give a copy of that form to the Vendor at or prior to Settlement;
 - (ii) produce at settlement, a Bank cheque for the Withholding Amount payable to the ATO;
 - (iii) submit the Bank cheque to the ATO immediately after settlement; and
 - (iv) provide the Vendor with a copy of the receipt of payment of the Withholding Amount.
- (c) The payment by the Purchaser of the Withholding Amount in accordance with Special Condition 18.4(b) is credited to the payment of the Price.
- (d) If requested by the Vendor in a notice, the Bank cheque for the Withholding Amount must be paid to the solicitor for the Vendor or the solicitor for the Buyer on their written undertaking to pay the cheque to the ATO immediately after Settlement.
- (e) If Special Condition 18.4(b) applies and settlement is effected in accordance with Special Condition 15.8:
 - (i) if payment to the ATO is available through the ELN direct the withholding amount be made to the ATO; or
 - (ii) if payment to the ATO is not available through the ELN, the Purchaser must produce to the Vendor prior to settlement, a Bank cheque for the GST Payment.
- (f) This Special Condition 18.4(f) applies if:

- (i) the Vendor notifies the Purchaser that the Vendor has applied for a Clearance Certificate or a Variation Notice; and
- (ii) the Clearance Certificate or Variation Notice is not given to the Purchaser at least 5 Business Days before the Settlement.
- (g) If Special Condition 18.4(f) applies then the Vendor may give the Purchaser a notice:
 - (i) stating the grounds for the extension;
 - (ii) extending the Due Date for Settlement to a date that is not later than 10 Business Days after the then current Due Date for Settlement; and
 - (iii) time will be of the essence of the new Due Date for Settlement.

19. VENDOR'S RIGHT TO TERMINATE

19.1 Vendor's right to terminate

- (a) The Vendor may terminate this Contract at any time by notice in writing to the Purchaser if:
 - (i) any requirement imposed by an Authority in relation to the certification or Registration of the Plan of Subdivision is too onerous for the Vendor to perform; or
 - (ii) certification or Registration of the Plan of Subdivision is refused other than due to an act or omission of the Vendor; or
 - (iii) due to fire, flood, storm or natural disaster it becomes impracticable for the Vendor to continue with the Development or the Development will be delayed such that it will not be completed by the Registration Date.
- (b) The Vendor may terminate this Contract at any time up to 12 months from the Day of Sale if the Vendor forms the view that it cannot proceed with the Project or the Development for commercial, financial, practical, planning or any other reason whatsoever.

19.2 Refund of deposit

If this Contract is terminated by the Vendor pursuant to Special Condition 19.1(a) or Special Condition 19.1(b), any Deposit or part Deposit paid by the Purchaser must be refunded to the Purchaser together with any interest accrued pursuant to Special Condition 5.2. The Vendor will not be liable or responsible in any way for any Loss the Purchaser incurs or may incur as a result of the termination of this Contract by the Vendor pursuant to Special Conditions 19.1(a) or 19.1(b).

20. SALE OR MORTGAGE OF LAND BY VENDOR

20.1 Sale by Vendor

- (a) The Purchaser acknowledges that the Vendor may transfer the Land or any part of the Land and may assign or novate the benefit of this Contract to that transferee or third party.

- (b) The Purchaser acknowledges that if the Vendor assigns or novates this Contract, the Purchaser must comply with this Contract as if the transferee or grantee is the Vendor named in this Contract and the original Vendor named in this Contract is released from all obligations of the Vendor under this Contract.
- (c) If requested by the Vendor, the Purchaser will within 7 days of receiving the request from the Vendor sign any such acknowledgement, consent or deed confirming that the benefit of the rights and obligations are assigned or novated to the transferee and that the original Vendor is released from obligations under this Contract.

20.2 Mortgage by Vendor

The Vendor may mortgage or charge the Subdivision Land or further mortgage or charge the Subdivision Land or obtain any further advances on any mortgage or charge affecting the Subdivision Land at any time prior to Settlement, and the Purchaser hereby consents to the Vendor so doing.

21. PURCHASER WARRANTIES AND CAPACITY

21.1 Purchaser's Warranty

- (a) The Purchaser covenants and warrants with and to the Vendor that:
 - (i) subject to Special Condition 23, the consent, approval or licence of any person or body is not required as a pre-condition to the Purchaser entering into this Contract or the purchase hereby effected or if any such consent is required, including but not limited to the consent, licence or approval or under any State or Federal Act, regulation policy and/or guideline or the like the Purchaser has prior to entering into this Contract obtained all such consents approvals or licences as will be necessary or, if applicable, has obtained statements of non-objection thereto as the case may require;
 - (ii) it has full legal capacity and power to:
 - (A) own property; and
 - (B) enter into and perform its obligations pursuant to this Contract;
 - (iii) the Purchaser is duly empowered to enter into this Contract and is not prohibited from entering into this Contract by any reason whatsoever and without limiting the generality of the foregoing by reason of any trust, charge or undertaking.
- (b) In the event that any of the warranties in this Special Condition are untrue in any respect the Purchaser will indemnify the Vendor against any losses which the Vendor suffers as a result of it having relied on any such warranty when entering into this Contract.

21.2 Purchaser acting as Trustee

If it is stated in this Contract that the Purchaser enters into this Contract in its capacity as trustee for a trust (**Trust**) then the Purchaser is liable under this Contract in its own capacity and in its capacity as trustee of the Trust, and warrants and covenants to the Vendor that:

- (a) it is the only trustee of the Trust, and will remain the only trustee of the Trust until Settlement;
- (b) no action has been taken to remove it as sole trustee of the Trust, and no such action will be taken until Settlement;
- (c) it has power under the constituent documents of the trust (Trust Deed) to enter into and perform its obligations under this Contract;
- (d) it is entitled, under the terms of the Trust Deed, to be indemnified out of the funds and assets of the Trust for its liabilities and obligations under this Contract, in all circumstances except to the extent of any liability arising from gross negligence, fraud, wilful misconduct or breach of trust on its part, and its rights under this indemnity rank in priority to the rights of the beneficiaries under the Trust;
- (e) it is not in default under the Trust Deed and will not be in default under the Trust Deed prior to Settlement; and
- (f) no action has been taken or is known or believed to be proposed to be taken to terminate the Trust.

22. GUARANTEE AND INDEMNITY

- (a) If the Purchaser is a proprietary corporation (excluding a corporation whose shares are listed on an Australian Stock Exchange), the Purchaser will simultaneously with the execution of this Contract obtain the execution of the Guarantee by such directors and shareholders of the Purchaser as the Vendor may require. If the duly executed Guarantee is not provided or delivered to the Vendor or its agents or the Vendor's Legal Practitioner, the Purchaser will be deemed to be in default under this Contract of an essential term or condition contained in this Contract and the Vendor may exercise all its rights and remedies accordingly.
- (b) If the Purchaser is a corporation and if this Contract has been signed by a person as a director for and on behalf of that corporation, that person hereby represents and warrants to the Vendor as an additional inducement to the Vendor entering into this Contract that he or she has authority pursuant to the constitution of that corporation (or otherwise if that corporation is a foreign corporation) to bind that corporation to all the provisions contained in this Contract.
- (c) If the Purchaser buys as an agent for an undisclosed principal, the Purchaser remains personally liable under this Contract at all times.

23. FOREIGN ACQUISITIONS AND TAKEOVERS ACT

23.1 Purchaser Warranties

- (a) If the Purchaser has ticked box A1 in the Particulars of Sale:
 - (i) the Purchaser warrants that FIRB Approval is required for the purchase of the Property and the Purchaser has obtained that approval; and

- (ii) the Purchaser must provide a copy of the FIRB Approval to the Vendor prior to signing the Contract.
- (b) If the Purchaser has ticked box A2 in the Particulars of Sale:
 - (i) the Purchaser warrants that FIRB Approval is not required for its purchase of the Property from the Vendor;
 - (ii) the Purchaser acknowledges that the Vendor is relying on the Purchaser's warranty in Special Condition 23.1(b)(i);
 - (iii) the Purchaser indemnifies the Vendor against all Claims and Loss including consequential loss which the Vendor may inadvertently become liable for as a result of the Vendor relying on the Purchaser's warranty when entering the Contract; and
 - (iv) if the Contract does not proceed to settlement due to the Purchaser's breach of the warranty in Special Condition 23.1(b)(i), the Deposit will be forfeited to the Vendor as its absolute Property or if the Purchaser has provided a Bank Guarantee, Special Condition 6.5(b) will apply.

23.2 Requirements in Relation to FIRB Approval

If the Purchaser has ticked box A3 then:

- (a) this Contract is subject to and conditional upon the Purchaser obtaining FIRB Approval within 60 days of the Day of Sale or such later date approved by the Vendor (FIRB Approval Date);
- (b) upon the FIRB Approval being obtained, the Purchaser must within 48 hours, provide a copy of the FIRB Approval to the Vendor;
- (c) if the Purchaser is unable to obtain the FIRB Approval by the FIRB Approval Date, this Contract will come to an end on the FIRB Approval Date and any deposit paid by the Purchaser will be refunded in full;
- (d) the Purchaser agrees that:
 - (i) the Purchaser must within 5 Business Days of the Day of Sale apply to the FIRB for the FIRB Approval;
 - (ii) the Purchaser must immediately complete such forms, applications, declarations or documents that are required to make and give notice of and support the Purchaser's application for FIRB Approval;
 - (iii) the Purchaser must not withdraw his or her application for FIRB Approval once lodged without the Vendor's prior written consent; and
 - (iv) the Purchaser must, if his or her application is rejected or if the FIRB makes a request for further information or responds in any other way to the Purchaser's application, within

24 hours of receipt of any response or communication from the FIRB, advise and provide the Vendor with a copy of any correspondence received from the FIRB.

- (e) The Purchaser further agrees:
 - (i) that all information provided by the Purchaser to the FIRB or the Vendor under this Special Condition 23 will be true and correct in every particular and will not by omission of information or otherwise misrepresent any facts;
 - (ii) to indemnify and keep indemnified the Vendor from and against any Claim and Loss including any consequential loss it may suffer or incur if the Purchaser breaches any part of this Special Condition 23; and
 - (iii) to comply with this Special Condition 23 and the provisions after settlement and completion of this Contract should that be necessary in order to comply with any of FIRB's requirements or the requirements of the FATA.

23.3 Nomination

- (a) If a Purchaser, has under this Contract a right of nomination then such right of nomination will only be capable or able to be exercised in favour of a Foreigner and/or will only be permitted to include a Foreigner as an additional or substitute transferee if, and only if:
 - (i) the Vendor consents and approves (which the Vendor may withhold for any reason) such nomination; and
 - (ii) the nominee has obtained separate and specific FIRB Approval to acquire the Property and has produced that approval to the Vendor; and
 - (iii) such nomination does not contravene FATA or the requirements of FIRB; and
 - (iv) the nominee complies with this Special Condition 23 and with all and any requests and directions of the Vendor which it may make or give in order to be satisfied that such nomination (if approved) complies with FIRB's requirements or the nomination (if approved) complies with FIRB's requirements or the requirements of FATA.
- (b) The Vendor will not be liable for any Loss of any nature whatsoever suffered by the Purchaser occasioned by the Vendor's refusal to consent to a nomination or occasioned by the Purchaser being prevented from nominating by virtue of the provisions of Special Condition 23.3(a).
- (c) The Purchaser will have no Claim against the Vendor and will not be entitled to make any demand or rescind or terminate this Contract if the Purchaser has been prevented from nominating by virtue of the provisions of Special Condition 23.3(a).

24. BREACH

24.1 Interest

If the Purchaser defaults in payment of any money under this Contract then interest at the rate of 2% higher than the rate for the time being fixed at the time of default under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) in lieu of any rate named in the Contract. Such interest will be computed from the due date for payment of the said money pursuant to this Contract until such moneys are paid, will accrue daily and will be capitalised weekly and will be payable by the Purchaser to the Vendor upon demand without the necessity for any notice in writing whether under this Special Condition 24.1 or otherwise. The exercise of the Vendor's rights pursuant to this Special Condition 24.1 is without prejudice to any other rights, power and remedies of the Vendor under this Contract or otherwise.

24.2 Costs

- (a) Without limiting General Condition 25, if the Purchaser breaches this Contract, the Purchaser, in addition to any interest payable to the Vendor pursuant to Special Condition 24.1 must pay to the Vendor on demand:
 - (i) Costs, whether they were foreseeable or not, which are or may be incurred by the Vendor directly or indirectly on a full indemnity basis as charged to or incurred by the Vendor, as a result of the Purchaser's breach of this Contract including, without limiting the generality of this Special Condition, interest on any mortgages, bank fees, loss of discounts on bills or borrowings, legal costs, Outgoings, including land tax, and loss of income or earnings; and
 - (ii) the Vendor's proper legal costs and disbursements including those of and incidental to preparation and service of a default notice pursuant to General Condition 27.
- (b) The Purchaser acknowledges that:
 - (i) the Vendor is not required to serve a default notice as referred to in General Condition 27 before demanding payment of the Costs referred to in Special Condition 24.2(a)(i); and
 - (ii) the Purchaser will not have remedied any breach over this Contract unless all Costs payable in accordance with Special Condition 24.2(a) and any interest payable in accordance with Special Condition 24.1 has been paid in full.

24.3 Indemnity

- (a) The Purchaser indemnifies and keeps the Vendor against all Costs referred to in Special Condition 24.2(a).
- (b) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Purchaser and is not affected by:
 - (i) the granting of time, forbearance or other concession;

- (ii) any absolute or partial release;
 - (iii) any variation, novation, nomination, renewal or assignment;
 - (iv) the fact that this Contract is wholly or partially void, voidable or unenforceable;
 - (v) any exercise or purported exercise of any right; or
 - (vi) completion or termination of this Contract.
- (c) The Vendor need not incur a Loss or make a payment before enforcing a right of indemnity conferred by this Contract and the Purchaser must pay the amount owing under this indemnity on demand by the Vendor.

24.4 Insolvency Event - Repudiation

- (a) The Purchaser is in fundamental breach of this Contract if:
- (i) an order or resolution is made that the Purchaser be wound up;
 - (ii) application is made for the appointment of a provisional or other liquidator to the Purchaser;
 - (iii) a scheme of arrangement or composition with creditors is made, or an assignment for the benefit of creditors is made, by or on behalf of the Purchaser;
 - (iv) the Purchaser is unable to pay its debts when they fall due or commits an act of bankruptcy; or
 - (v) the Purchaser made a statement or conducts itself in a manner from which it may reasonably determine that the Purchaser is unable to pay its debts when they fall due and/or is or will be unable to complete this Contract and discharge its obligations hereunder.
- (b) The Vendor may elect to end this Contract for breach of this Special Condition 24.4 by notice to the Purchaser with immediate effect and General Condition 27.1 will not apply to this Special Condition 24.4. The exercise of the Vendor's right pursuant to this Special Condition 24.4 is without prejudice to the Vendor's rights pursuant to General Condition 28.4.

Annexure A

General Conditions

Contract of Sale of Real Estate—General Conditions

Part 2 of the standard form of contract prescribed by the *Estate Agents (Contracts) Regulations 2008*

TITLE

1. Encumbrances

1.1 The purchaser buys the property subject to:

- (a) any encumbrance shown in the section 32 statement other than mortgages or caveats; and
- (b) any reservations in the crown grant; and
- (c) any lease referred to in the particulars of sale.

1.2 The purchaser indemnifies the vendor against all obligations under any lease that are to be performed by the landlord after settlement.

1.3 In this general condition 'section 32 statement' means a statement required to be given by a vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.

2. Vendor warranties

2.1 The vendor warrants that these general conditions 1 to 28 are identical to the general conditions 1 to 28 in the standard form of contract of sale of real estate prescribed by the *Estate Agents (Contracts) Regulations 2008* for the purposes of section 53A of the **Estate Agents Act 1980**.

2.2 The warranties in general conditions 2.3 and 2.4 replace the purchaser's right to make requisitions and inquiries.

2.3 The vendor warrants that the vendor:

- (a) has, or by the due date for settlement will have, the right to sell the land; and
- (b) is under no legal disability; and
- (c) is in possession of the land, either personally or through a tenant; and
- (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the land and which gives another party rights which have priority over the interest of the purchaser; and

- (e) will at settlement be the holder of an unencumbered estate in fee simple in the land; and
- (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the land.

2.4 The vendor further warrants that the vendor has no knowledge of any of the following:

- (a) public rights of way over the land;
- (b) easements over the land;
- (c) lease or other possessory agreement affecting the land;
- (d) notice or order affecting the land which will not be dealt with at settlement, other than the usual rate notices and any land tax notices;
- (e) legal proceedings which would render the sale of the land void or voidable or capable of being set aside.

2.5 The warranties in general conditions 2.3 and 2.4 are subject to any contrary provisions in this contract and disclosures in the section 32 statement required to be given by the vendor under section 32 of the *Sale of Land Act 1962* in accordance with Division 2 of Part II of that Act.

2.6 If sections 137B and 137C of the **Building Act 1993** apply to this contract, the vendor warrants that:

- (a) all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
- (b) all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
- (c) domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the **Building Act 1993** and regulations made under the **Building Act 1993**.

2.7 Words and phrases used in general condition 2.6 which are defined in the **Building Act 1993** have the same meaning in general condition 2.6.

3. Identity of the land

- 3.1** An omission or mistake in the description of the property or any deficiency in the area, description or measurements of the land does not invalidate the sale.
- 3.2** The purchaser may not:
- (a) make any objection or claim for compensation for any alleged misdescription of the property or any deficiency in its area or measurements; or
 - (b) require the vendor to amend title or pay any cost of amending title.

4. Services

- 4.1** The vendor does not represent that the services are adequate for the purchaser's proposed use of the property and the vendor advises the purchaser to make appropriate inquiries. The condition of the services may change between the day of sale and settlement and the vendor does not promise that the services will be in the same condition at settlement as they were on the day of sale.
- 4.2** The purchaser is responsible for the connection of all services to the property after settlement and the payment of any associated cost.

5. Consents

The vendor must obtain any necessary consent or licence required for the sale. The contract will be at an end and all money paid must be refunded if any necessary consent or licence is not obtained by settlement.

6. Transfer

The transfer of land document must be prepared by the purchaser and delivered to the vendor at least 10 days before settlement. The delivery of the transfer of land document is not acceptance of title. The vendor must prepare any document required for assessment of duty on this transaction relating to matters that are or should be within the knowledge of the vendor and, if requested by the purchaser, must provide a copy of that document at least 3 days before settlement.

7. Release of security interest

- 7.1** This general condition applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) applies.
- 7.2** For the purposes of enabling the purchaser to search the Personal Property Securities Register for any security interests affecting any personal property for which the purchaser may be entitled to a release, statement, approval or correction in accordance with general condition 7.4, the purchaser may request the vendor to provide the vendor's date of birth to the purchaser. The vendor must comply with a request made by the purchaser under this condition if the purchaser makes the request at least 21 days before the due date for settlement.

- 7.3** If the purchaser is given the details of the vendor's date of birth under condition 7.2, the purchaser must
- (a) only use the vendor's date of birth for the purposes specified in condition 7.2; and
 - (b) keep the date of birth of the vendor secure and confidential.
- 7.4** The vendor must ensure that at or before settlement, the purchaser receives—
- (a) a release from the secured party releasing the property from the security interest; or
 - (b) a statement in writing in accordance with section 275(1)(b) of the *Personal Property Securities Act 2009* (Cth) setting out that the amount or obligation that is secured is nil at settlement; or
 - (c) a written approval or correction in accordance with section 275(1)(c) of the *Personal Property Securities Act 2009* (Cth) indicating that, on settlement, the personal property included in the contract is not or will not be property in which the security interest is granted.
- 7.5** Subject to general condition 7.6, the vendor is not obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property—
- (a) that—
 - (i) the purchaser intends to use predominantly for personal, domestic or household purposes; and
 - (ii) has a market value of not more than \$5000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the *Personal Property Securities Act 2009* (Cth), not more than that prescribed amount; or
 - (b) that is sold in the ordinary course of the vendor's business of selling personal property of that kind.
- 7.6** The vendor is obliged to ensure that the purchaser receives a release, statement, approval or correction in respect of personal property described in general condition 7.5 if—
- (a) the personal property is of a kind that may or must be described by serial number in the Personal Property Securities Register; or
 - (b) the purchaser has actual or constructive knowledge that the sale constitutes a breach of the security agreement that provides for the security interest.
- 7.7** A release for the purposes of general condition 7.4(a) must be in writing.
- 7.8** A release for the purposes of general condition 7.4(a) must be effective in releasing the goods from the security interest and be in a form which allows the purchaser to take title to the goods free of that security interest.

- 7.9** If the purchaser receives a release under general condition 7.4(a) the purchaser must provide the vendor with a copy of the release at or as soon as practicable after settlement.
- 7.10** In addition to ensuring that a release is received under general condition 7.4(a), the vendor must ensure that at or before settlement the purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.
- 7.11** The purchaser must advise the vendor of any security interest that is registered on or before the day of sale on the Personal Property Securities Register, which the purchaser reasonably requires to be released, at least 21 days before the due date for settlement.
- 7.12** The vendor may delay settlement until 21 days after the purchaser advises the vendor of the security interests that the purchaser reasonably requires to be released if the purchaser does not provide an advice under general condition 7.11.
- 7.13** If settlement is delayed under general condition 7.12 the purchaser must pay the vendor—
- (a) interest from the due date for settlement until the date on which settlement occurs or 21 days after the vendor receives the advice, whichever is the earlier; and
 - (b) any reasonable costs incurred by the vendor as a result of the delay—
- as though the purchaser was in default.
- 7.14** The vendor is not required to ensure that the purchaser receives a release in respect of the land. This general condition 7.14 applies despite general condition 7.1.
- 7.15** Words and phrases which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in general condition 7 unless the context requires otherwise.

8. Builder warranty insurance

The vendor warrants that the vendor will provide at settlement details of any current builder warranty insurance in the vendor's possession relating to the property if requested in writing to do so at least 21 days before settlement.

9. General law land

- 9.1** This general condition only applies if any part of the land is not under the operation of the **Transfer of Land Act 1958**.
- 9.2** The vendor is taken to be the holder of an unencumbered estate in fee simple in the land if there is an unbroken chain of title starting at least 30 years before the day of sale proving on the face of the documents the ownership of the entire legal and equitable estate without the aid of other evidence.
- 9.3** The purchaser is entitled to inspect the vendor's chain of title on request at such place in Victoria as the vendor nominates.

- 9.4** The purchaser is taken to have accepted the vendor's title if:
- (a) 21 days have elapsed since the day of sale; and
 - (b) the purchaser has not reasonably objected to the title or reasonably required the vendor to remedy a defect in the title.
- 9.5** The contract will be at an end if:
- (a) the vendor gives the purchaser a notice that the vendor is unable or unwilling to satisfy the purchaser's objection or requirement and that the contract will end if the objection or requirement is not withdrawn within 14 days of the giving of the notice; and
 - (b) the objection or requirement is not withdrawn in that time.
- 9.6** If the contract ends in accordance with general condition 9.5, the deposit must be returned to the purchaser and neither party has a claim against the other in damages.
- 9.7** General condition 10.1 should be read, in respect of that part of the land which is not under the operation of the **Transfer of Land Act 1958**, as if the reference to 'registered proprietor' is a reference to 'owner'.

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10. Settlement

- 10.1** At settlement:
- (a) the purchaser must pay the balance; and
 - (b) the vendor must:
 - (i) do all things necessary to enable the purchaser to become the registered proprietor of the land; and
 - (ii) give either vacant possession or receipt of rents and profits in accordance with the particulars of sale.
- 10.2** The vendor's obligations under this general condition continue after settlement.
- 10.3** Settlement must be conducted between the hours of 10.00 a.m. and 4.00 p.m. unless the parties agree otherwise.

11. Payment

- 11.1** The purchaser must pay the deposit:
- (a) to the vendor's licensed estate agent; or
 - (b) if there is no estate agent, to the vendor's legal practitioner or conveyancer; or

- (c) if the vendor directs, into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the joint names of the purchaser and the vendor.

11.2 If the land sold is a lot on an unregistered plan of subdivision, the deposit:

- (a) must not exceed 10% of the price; and
- (b) must be paid to the vendor's estate agent, legal practitioner or conveyancer and held by the estate agent, legal practitioner or conveyancer on trust for the purchaser until the registration of the plan of subdivision.

11.3 The purchaser must pay all money other than the deposit:

- (a) to the vendor, or the vendor's legal practitioner or conveyancer; or
- (b) in accordance with a written direction of the vendor or the vendor's legal practitioner or conveyancer.

11.4 At settlement, payments may be made or tendered:

- (a) in cash; or
- (b) by cheque drawn on an authorised deposit-taking institution; or
- (c) if the parties agree, by electronically transferring the payment in the form of cleared funds.

11.5 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate in relation to which an authority under section 9(3) of the **Banking Act 1959 (Cth)** is in force.

11.6 At settlement, the purchaser must pay the fees on up to three cheques drawn on an authorised deposit-taking institution. If the vendor requests that any additional cheques be drawn on an authorised deposit-taking institution, the vendor must reimburse the purchaser for the fees incurred.

12. Stakeholding

12.1 The deposit must be released to the vendor if:

- (a) the vendor provides particulars, to the satisfaction of the purchaser, that either—
 - (i) there are no debts secured against the property; or
 - (ii) if there are any debts, the total amount of those debts does not exceed 80% of the sale price; and
- (b) at least 28 days have elapsed since the particulars were given to the purchaser under paragraph (a); and
- (c) all conditions of section 27 of the **Sale of Land Act 1962** have been satisfied.

12.2 The stakeholder must pay the deposit and any interest to the party entitled when the deposit is released, the contract is settled, or the contract is ended.

12.3 The stakeholder may pay the deposit and any interest into court if it is reasonable to do so.

13. GST

13.1 The purchaser does not have to pay the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price unless the particulars of sale specify that the price is 'plus GST'. However the purchaser must pay to the vendor any GST payable by the vendor:

- (a) solely as a result of any action taken or intended to be taken by the purchaser after the day of sale, including a change of use; or
- (b) if the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on and the supply (or part of it) does not satisfy the requirements of section 38-480 of the GST Act; or
- (c) if the particulars of sale specify that the supply made under this contract is of a going concern and the supply (or a part of it) does not satisfy the requirements of section 38-325 of the GST Act.

13.2 The purchaser must pay to the vendor any GST payable by the vendor in respect of a taxable supply made under this contract in addition to the price if the particulars of sale specify that the price is 'plus GST'.

13.3 If the purchaser is liable to pay GST, the purchaser is not required to make payment until provided with a tax invoice, unless the margin scheme applies.

13.4 If the particulars of sale specify that the supply made under this contract is of land on which a 'farming business' is carried on:

- (a) the vendor warrants that the property is land on which a farming business has been carried on for the period of 5 years preceding the date of supply; and
- (b) the purchaser warrants that the purchaser intends that a farming business will be carried on after settlement on the property.

13.5 If the particulars of sale specify that the supply made under this contract is a 'going concern':

- (a) the parties agree that this contract is for the supply of a going concern; and
- (b) the purchaser warrants that the purchaser is, or prior to settlement will be, registered for GST; and
- (c) the vendor warrants that the vendor will carry on the going concern until the date of supply.

13.6 If the particulars of sale specify that the supply made under this contract is a 'margin scheme' supply, the parties agree that the margin scheme applies to this contract.

13.7 This general condition will not merge on either settlement or registration.

13.8 In this general condition:

- (a) 'GST Act' means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (b) 'GST' includes penalties and interest.

14. Loan

14.1 If the particulars of sale specify that this contract is subject to a loan being approved, this contract is subject to the lender approving the loan on the security of the property by the approval date or any later date allowed by the vendor.

14.2 The purchaser may end the contract if the loan is not approved by the approval date, but only if the purchaser:

- (a) immediately applied for the loan; and
- (b) did everything reasonably required to obtain approval of the loan; and
- (c) serves written notice ending the contract on the vendor within 2 clear business days after the approval date or any later date allowed by the vendor; and
- (d) is not in default under any other condition of this contract when the notice is given.

14.3 All money must be immediately refunded to the purchaser if the contract is ended.

15. Adjustments

15.1 All periodic outgoings payable by the vendor, and any rent and other income received in respect of the property must be apportioned between the parties on the settlement date and any adjustments paid and received as appropriate.

15.2 The periodic outgoings and rent and other income must be apportioned on the following basis:

- (a) the vendor is liable for the periodic outgoings and entitled to the rent and other income up to and including the day of settlement; and
- (b) the land is treated as the only land of which the vendor is owner (as defined in the **Land Tax Act 2005**); and
- (c) the vendor is taken to own the land as a resident Australian beneficial owner; and
- (d) any personal statutory benefit available to each party is disregarded in calculating apportionment.

TRANSACTIONAL**16. Time**

16.1 Time is of the essence of this contract.

16.2 Time is extended until the next business day if the time for performing any action falls on a Saturday, Sunday or bank holiday.

17. Service

17.1 Any document sent by—

- (a) post is taken to have been served on the next business day after posting, unless proved otherwise;
- (b) email is taken to have been served at the time of receipt within the meaning of section 13A of the *Electronic Transactions (Victoria) Act 2000*.

17.2 Any demand, notice, or document required to be served by or on any party may be served by or on the legal practitioner or conveyancer for that party. It is sufficiently served if served on the party or on the legal practitioner or conveyancer:

- (a) personally; or
- (b) by pre-paid post; or
- (c) in any manner authorised by law or the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner; or
- (d) by email.

17.3 This general condition applies to the service of any demand, notice or document by or on any party, whether the expression 'give' or 'serve' or any other expression is used.

18. Nominee

The purchaser may nominate a substitute or additional transferee, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

19. Liability of signatory

Any signatory for a proprietary limited company purchaser is personally liable for the due performance of the purchaser's obligations as if the signatory were the purchaser in the case of a default by a proprietary limited company purchaser.

20. Guarantee

The vendor may require one or more directors of the purchaser to guarantee the purchaser's performance of this contract if the purchaser is a proprietary limited company.

21. Notices

The purchaser is responsible for any notice, order, demand or levy imposing liability on the property that is issued or made on or after the day of sale that does not relate to periodic outgoings. The purchaser may enter the property to comply with that responsibility where action is required before settlement.

22. Inspection

The purchaser and/or another person authorised by the purchaser may inspect the property at any reasonable time during the 7 days preceding and including the settlement day.

23. Terms contract

23.1 If this is a 'terms contract' as defined in the **Sale of Land Act 1962**:

- (a) any mortgage affecting the land sold must be discharged as to that land before the purchaser becomes entitled to possession or to the receipt of rents and profits unless the vendor satisfies section 29M of the **Sale of Land Act 1962**; and
- (b) the deposit and all other money payable under the contract (other than any money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licensed estate agent to be applied in or towards discharging the mortgage.

23.2 While any money remains owing each of the following applies:

- (a) the purchaser must maintain full damage and destruction insurance of the property and public risk insurance noting all parties having an insurable interest with an insurer approved in writing by the vendor;
- (b) the purchaser must deliver copies of the signed insurance application forms, the policies and the insurance receipts to the vendor not less than 10 days before taking possession of the property or becoming entitled to receipt of the rents and profits;
- (c) the purchaser must deliver copies of any amendments to the policies and the insurance receipts on each amendment or renewal as evidence of the status of the policies from time to time;
- (d) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (e) insurance costs paid by the vendor under paragraph 23.2(d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (f) the purchaser must maintain and operate the property in good repair (fair wear and tear excepted) and keep the property safe, lawful, structurally sound, weatherproof and free from contaminations and dangerous substances;

- (g) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (h) the purchaser must observe all obligations that affect owners or occupiers of land;
- (i) the vendor and/or other person authorised by the vendor may enter the property at any reasonable time to inspect it on giving 7 days written notice, but not more than twice in a year.

24. Loss or damage before settlement

- 24.1** The vendor carries the risk of loss or damage to the property until settlement.
- 24.2** The vendor must deliver the property to the purchaser at settlement in the same condition it was in on the day of sale, except for fair wear and tear.
- 24.3** The purchaser must not delay settlement because one or more of the goods is not in the condition required by general condition 24.2, but may claim compensation from the vendor after settlement.
- 24.4** The purchaser may nominate an amount not exceeding \$5,000 to be held by a stakeholder to be appointed by the parties if the property is not in the condition required by general condition 24.2 at settlement.
- 24.5** The nominated amount may be deducted from the amount due to the vendor at settlement and paid to the stakeholder, but only if the purchaser also pays an amount equal to the nominated amount to the stakeholder.
- 24.6** The stakeholder must pay the amounts referred to in general condition 24.5 in accordance with the determination of the dispute, including any order for payment of the costs of the resolution of the dispute.

25. Breach

A party who breaches this contract must pay to the other party on demand:

- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach; and
- (b) any interest due under this contract as a result of the breach.

DEFAULT

26. Interest

Interest at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the **Penalty Interest Rates Act 1983** is payable on any money owing under the contract during the period of default, without affecting any other rights of the offended party.

27. Default notice

27.1 A party is not entitled to exercise any rights arising from the other party's default, other than the right to receive interest and the right to sue for money owing, until the other party is given and fails to comply with a written default notice.

27.2 The default notice must:

- (a) specify the particulars of the default; and
- (b) state that it is the offended party's intention to exercise the rights arising from the default unless, within 14 days of the notice being given—
 - (i) the default is remedied; and
 - (ii) the reasonable costs incurred as a result of the default and any interest payable are paid.

28. Default not remedied

28.1 All unpaid money under the contract becomes immediately payable to the vendor if the default has been made by the purchaser and is not remedied and the costs and interest are not paid.

28.2 The contract immediately ends if:

- (a) the default notice also states that unless the default is remedied and the reasonable costs and interest are paid, the contract will be ended in accordance with this general condition; and
- (b) the default is not remedied and the reasonable costs and interest are not paid by the end of the period of the default notice.

28.3 If the contract ends by a default notice given by the purchaser:

- (a) the purchaser must be repaid any money paid under the contract and be paid any interest and reasonable costs payable under the contract; and
- (b) all those amounts are a charge on the land until payment; and
- (c) the purchaser may also recover any loss otherwise recoverable.

28.4 If the contract ends by a default notice given by the vendor:

- (a) the deposit up to 10% of the price is forfeited to the vendor as the vendor's absolute property, whether the deposit has been paid or not; and
- (b) the vendor is entitled to possession of the property; and
- (c) in addition to any other remedy, the vendor may within one year of the contract ending either:
 - (i) retain the property and sue for damages for breach of contract; or

- (ii) resell the property in any manner and recover any deficiency in the price on the resale and any resulting expenses by way of liquidated damages; and
- (d) the vendor may retain any part of the price paid until the vendor's damages have been determined and may apply that money towards those damages; and
- (e) any determination of the vendor's damages must take into account the amount forfeited to the vendor.

28.5 The ending of the contract does not affect the rights of the offended party as a consequence of the default.



Contract of Sale

Annexure B

Guarantee and Indemnity

I/We _____ of _____ (Guarantor)

in consideration of **Hume Torquay Pty Ltd (ACN 609 789 737)** having agreed at the request of the Guarantor to sell the property described in the schedule hereto (**Property**) to the purchaser described in the schedule hereto (**Purchaser**) pursuant to the contract of sale to which this guarantee and indemnity is attached (**Contract**) **DO HEREBY JOINTLY AND SEVERALLY GUARANTEE** the due and punctual payment by the Purchaser to the Vendor of the moneys payable by the Purchaser on any default, repudiation or otherwise and **DO HEREBY JOINTLY AND SEVERALLY INDEMNIFY AND AGREE TO KEEP INDEMNIFIED** the Vendor against the failure by the Purchaser to make due and punctual payment of such moneys and it is hereby declared that:-

1. The joint and several liabilities of the Guarantor will not be abrogated prejudiced or affected by:-
 - (a) the granting of time credit or any indulgence or other concession to the Purchaser or to any party to any negotiable instrument made drawn given accepted or endorsed by the Purchaser or the Guarantor;
 - (b) any compounding with the Purchaser or the said party to any negotiable instrument and any release and discharge of the Purchaser or all or any of the said parties to a negotiable instrument from liability under the foregoing guarantee and indemnity and any compromise abandonment waiver variation relinquishment or renewal or any securities documents of title or assets or any of the rights of the Vendor or by anything done or omitted or neglected to be done by the Vendor in exercise of the authorities powers and discretions vested in it by any dealing or thing which but for this provision might operate to abrogate prejudice or affect this Guarantee and Indemnity;
 - (c) the Vendor obtaining a judgment against the Purchaser in any Court of competent jurisdiction for payment of the whole or any part of the amount or amounts from time to time owing by the Purchaser;
 - (d) the Vendor assenting to any assignment by the Purchaser for the benefit of creditors and to any deed or scheme of arrangement or deed of composition under the Companies Act or the Bankruptcy Act;
 - (e) any other person or corporation giving an indemnity or guarantee of the Purchaser's obligations to the Vendor;

- (f) the liability of the Purchaser ceasing for any cause;
 - (g) reason of any security held or taken by the Vendor to secure the Purchaser's or the Guarantor's obligations being void defective or informal;
 - (h) the Vendor accepting a repudiation of the Contract by the Purchaser and will extend to any amounts payable by the Purchaser by way of damages or otherwise and whether payable under the Contract or by any action taken by the Vendor.
2. The Guarantee and Indemnity is to be continuing guarantee and indemnity and will remain in full force until the full amount for which the Guarantor is jointly and severally liable hereunder has been paid to the Vendor.
 3. The Guarantee and Indemnity is a principal obligation and is not to be treated as ancillary or collateral with any other obligation howsoever created to the intent that the Guarantee and Indemnity will be enforceable without first taking any steps or proceedings against the Purchaser and notwithstanding the loss by the Vendor of any security and notwithstanding any laches acts or omissions on the part of the Vendor.
 4. The Vendor may determine from time to time when it will enforce or refrain from enforcing the Guarantee and Indemnity.
 5. In the event of the liquidation of the Purchaser, the Guarantor will not be entitled to prove in such liquidation in competition with the Vendor and the Guarantor hereby authorises the Vendor to prove for all moneys owing to it by the Purchaser and not paid and to retain and carry to a suspense account and at the discretion of the Vendor to appropriate amounts received in respect thereof until the Vendor will have received one hundred cents in the dollar in respect of such moneys owing to it by the Purchaser. The Guarantor waives in favour of the Vendor all rights whatsoever against the Vendor and the Purchaser any other person estate or other assets so far as necessary to give effect to anything in this Indemnity and Guarantee contained.
 6. This Guarantee and Indemnity will not prejudicially affect or be prejudicially affected by any other security or guarantee now or hereafter held by the Vendor for any moneys in respect of which this Guarantee and Indemnity has been given but such other security or guarantee will be deemed to be collateral herewith. The Guarantors will not as against the Vendor in any proceedings claim the benefit or seek the transfer of any security or any part thereof.
 7. The joint and several liability of the Guarantor hereunder will extend to all amounts which the Vendor has been paid by the Purchaser but which the Vendor is obliged to repay on the ground of preference or otherwise.
 8. The Vendor may withdraw or waive any demand made by it on the Guarantor in which case such demand will be considered for all purposes in connection with this Guarantee and Indemnity not to have been made and the money hereby indemnified and guaranteed will not be deemed to have become payable by the Guarantor.

9. The provisions of any act regulation or proclamation now or hereafter to be in force providing for the postponement or payment of debts of affecting the exercise of the rights of creditors are hereby expressly excluded from and will not apply to this Guarantee and Indemnity.
10. Each Guarantor agrees that he or she will be liable hereunder notwithstanding that any other person or entity intended to be a guarantor in respect of all or any of the said money will refuse or fail to sign this or any other guarantee.
11. In this Guarantee and Indemnity where the context so requires or admit words importing the singular is deemed and taken to include the plural and the plural the singular and the masculine gender includes the feminine and neuter genders and vice versa and the expression **the Guarantor** will in the case of a sole individual Guarantor including his or her personal representatives and in the case of more than one individual Guarantor include all the guarantors jointly and each of them severally and their respective personal representatives.



Contract of Sale

Schedule

Property: The Property described in the Particulars of Sale of the Contract

Purchaser: The Purchaser named in the Particulars of Sale of the Contract

Dated this day of

Execution page

Executed as a deed

Signed sealed and delivered
by the Guarantor in the presence of:

.....
Signature of Witness

.....
Signature

.....
Name of Witness

Signed sealed and delivered
by the Guarantor in the presence of:

.....
Signature of Witness

.....
Signature

.....
Name of Witness



Contract of Sale

Annexure C

Nomination Notice



Contract of Sale

Annexure D

Plans



Contract of Sale

Annexure E

Specifications