



# Beaconsfield Wattle Estate

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## **BW STAGE - 2**

### **Contract of Sale of Land**

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Property Address: **BW Lot ..... BEACONSFIELD WATTLE ESTATE**  
**Address: .....Wattle Crescent Beaconsfield 3807**  
**on unregistered plan of subdivision 805058 F.**

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Vendor: **BR 190 KENILWORTH PTY LTD**

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Purchaser:

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Prepared by  
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## Due Diligence Checklist

For home and residential property buyers – Consumers Affairs Victoria

### Overview

Before you buy a home or vacant residential land, you should be aware of a range of issues that may affect that property and impose restrictions or obligations on you, if you buy it. This checklist aims to help you identify whether any of these issues will affect you. The questions are a starting point only and you may need to seek professional advice to answer some of them.

All sellers or estate agents must make this checklist available to potential buyers of homes or residential property.

Sellers or estate agents must:

- ensure copies of the due diligence checklist are available to potential buyers at any open for inspection
- include a link to this webpage ([consumer.vic.gov.au/due diligence checklist](http://consumer.vic.gov.au/due-diligence-checklist)) or include a copy on any website maintained by the estate agent or the seller (if no estate agent is acting for the seller).

You can print additional copies of the [Due diligence checklist \(Word, 58KB\)](#).

This page contains additional links to organisations and web pages that can help you learn more.

### Urban living

High density areas are attractive for their entertainment and service areas, but these activities create increased traffic as well as noise and odours from businesses and people. Familiarising yourself with the character of the area will give you a balanced understanding of what to expect.

For more information, visit the [Commercial and industrial noise page](#) on the [Environment Protection Authority website](#) and the [Odour page on the Environment Protection Authority website](#).

### Buying into an owners corporation

If the property is part of a subdivision with common property such as driveways or grounds, it may be subject to an owners corporation. You may be required to pay fees and follow rules that restrict what you can do on your property, such as a ban on pet ownership.

For more information, view our [Owners corporations section](#) and read the [Statement of advice and information for prospective purchasers and lot owners \(Word, 53KB\)](#).

### Growth areas

You should investigate whether you will be required to pay a growth areas infrastructure contribution.

For more information, visit the [Growth Areas Infrastructure Contribution page on the Department of Environment, Land, Water & Planning website](#).

To find out if a property is within the Melbourne Strategic Assessment area, which has special requirements for biodiversity conservation, use the Obligations in the Biodiversity Conservation Strategy Area tool on the Department of Environment, Land, Water and Planning - Native Vegetation Information Management website.

### Flood and fire risk

Properties are sometimes subject to the risk of fire and flooding due to their location. You should properly investigate these risks and consider their implications for land management, buildings and insurance premiums.

For information about fire risk, visit:

- [Bushfire Management Overlay in planning schemes - Department of Environment, Land, Water & Planning website](#)
- [Building in bushfire prone areas - Department of Environment, Land, Water & Planning website](#).

For general information about flood risk, visit the [Australian Flood Risk Information Portal on the Geoscience Australia website](#).

To find out who is responsible for floodplain management in your area, visit the [Catchment management framework page on the Department of Environment, Land, Water & Planning website](#).

Catchment management authority websites:

- [Melbourne Water website](#) - includes floodplain management for Port Phillip and Westernport regions
- [Corangamite Catchment Management Authority website](#)
- [East Gippsland Catchment Management Authority website](#)
- [Glenelg Hopkins Catchment Management Authority website](#)
- [Goulburn Broken Catchment Management Authority website](#)
- [Mallee Catchment Management Authority website](#)

- [North Central Catchment Management Authority website](#)
- [North East Catchment Management Authority website](#)
- [West Gippsland Catchment Management Authority website](#)
- [Wimmera Catchment Management Authority website](#).

### Rural properties

If you are looking at property in a rural zone, consider:

- Is the surrounding land use compatible with your lifestyle expectations? Farming can create noise or odour that may be at odds with your expectations of a rural lifestyle. For information about what impacts you should expect and how to manage them, visit the [New landholders section on the Agriculture Victoria website](#).
- Are you considering removing native vegetation? There are regulations which affect your ability to remove native vegetation on private property. The limitations on clearing and processes for legal clearing are set out on the [Native vegetation page on the Agriculture Victoria website](#).
- Do you understand your obligations to manage weeds and pest animals? Visit the [New landholders section on the Agriculture Victoria website](#).
- Can you build new dwellings? Contact the local council for more information.
- Does the property adjoin crown land, have a water frontage, contain a disused government road, or are there any crown licences associated with the land? For more information, visit the [Forestry & land use page on the Department of Environment, Land, Water & Planning website](#).

### Earth resource activity, such as mining

You may wish to find out more about exploration, mining and quarrying activity on or near the property and consider the issue of petroleum, geothermal and greenhouse gas sequestration permits, leases and licences, extractive industry authorisations and mineral licences.

For more information, visit the:

- [GeoVic page on the Department of Economic Development, Jobs, Transport and Resources website](#)
- [Information for community and landholders page on the Department of Economic Development, Jobs, Transport and Resources website](#).

### Soil and groundwater contamination

You should consider whether past activities, including the use of adjacent land, may have caused contamination at the site and whether this may prevent you from doing certain things to or on the land in the future.

For information on sites that have been audited for contamination, visit the [Contaminated site management page on the Environment Protection Authority website](#).

For guidance on how to identify if land is potentially contaminated, see the Potentially Contaminated Land General Practice Note June 2005 on the [Planning Practice Notes page on the Department of Environment, Land, Water & Planning website](#).

### Land boundaries

You should compare the measurements shown on the title document with actual fences and buildings on the property, to make sure the boundaries match. If you have concerns about this, you can speak to your lawyer or conveyancer, or commission a site survey to establish property boundaries.

For more information, visit the [Property and land titles page on the Department of Environment, Land, Water & Planning website](#).

### Planning controls affecting how the property is used, or the buildings on it

All land is subject to a planning scheme, run by the local council. How the property is zoned and any overlays that may apply, will determine how the land can be used. This may restrict such things as whether you can build on vacant land or how you can alter or develop the land and its buildings over time.

The local council can give you advice about the planning scheme, as well as details of any other restrictions that may apply, such as design guidelines or bushfire safety design. There may also be restrictions - known as encumbrances - on the property's title, which prevent you from developing the property. You can find out about encumbrances by looking at the section 32 statement.

### Proposed or granted planning permits

The local council can advise you if there are any proposed or issued planning permits for any properties close by. Significant developments in your area may change the local 'character' (predominant style of the area) and may increase noise or traffic near the property.

The local council can give you advice about planning schemes, as well as details of proposed or current planning permits. For more information, visit

the [Planning Schemes Online section on the Department of Environment, Land, Water & Planning website](#).

A cultural heritage management plan or cultural heritage permit may be required prior to works being undertaken on the property. For help to determine whether a cultural heritage management plan is required for a proposed activity, visit the Planning and development of land page on the Aboriginal Victoria website.

### **Safety**

Building laws are in place to ensure building safety. Professional building inspections can help you assess the property for electrical safety, possible illegal building work, adequate pool or spa fencing and the presence of asbestos, termites or other potential hazards.

For more information, visit the [Consumers section on the Victorian Building Authority website](#) and the [Energy Safe Victoria website](#).

### **Building permits**

There are laws and regulations about how buildings and retaining walls are constructed, which you may wish to investigate to ensure any completed or proposed building work is approved. The local council may be able to give you information about any building permits issued for recent building works done to the property, and what you must do to plan new work. You can also commission a private building surveyor's assessment.

For more information about building regulation, visit our [Building and renovating section](#).

### **Aboriginal cultural heritage and building plans**

For help to determine whether a cultural heritage management plan is required for a proposed activity, visit the Planning and development of land page on the Aboriginal Victoria website.

### **Insurance cover for recent building or renovation works**

Ask the vendor if there is any owner-builder insurance or builder's warranty to cover defects in the work done to the property.

You can find out more about insurance coverage on the [Owner builders page on the Victorian Building Authority website](#) and [Domestic building insurance page on the Victorian Building Authority website](#).

### **Connections for water, sewerage, electricity, gas, telephone and internet**

Unconnected services may not be available, or may incur a fee to connect. You may also need to choose from a range of suppliers for these services. This may be particularly important in rural areas where some services are not available.

For help choosing an energy retailer, visit the Victorian Energy Compare website.

For more information, visit the [Choosing a retailer page on the Your Choice website](#).

For information on possible impacts of easements, visit the [Caveats, covenants and easements page on the Department of Environment, Land, Water and Planning website](#).

For information on the National Broadband Network (NBN) visit the [NBN Co website](#).

### **Buyers' rights**

The contract of sale and section 32 statement contain important information about the property, so you should request to see these and read them thoroughly. Many people engage a lawyer or conveyancer to help them understand the contracts and ensure the sale goes through correctly. If you intend to hire a professional, you should consider speaking to them before you commit to the sale. There are also important rules about the way private sales and auctions are conducted. These may include a cooling-off period and specific rights associated with 'off the plan' sales. The important thing to remember is that, as the buyer, you have rights.

For more information, view our [Buying property section](#).

### **Professional associations and bodies that may be helpful:**

- [Australian Institute of Architects website](#)
- [Association of Consulting Surveyors Victoria website](#)
- [Australian Institute of Conveyancers \(Victorian Division\) website](#)
- [Institute of Surveyors Victoria website](#)
- [Law Institute of Victoria website](#)
- [Real Estate Institute of Victoria website](#)
- [Strata Community Australia \(Victoria\) website](#)

## Contract of Sale of Land

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**Vendor:** BR 190 KENILWORTH PTY LTD

**Property Address:** BW Lot ....., Stage 2 BEACONSFIELD WATTLE ESTATE  
**Address:** .....Wattle Crescent Beaconsfield 3807  
on unregistered plan of subdivision 805058 F.

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price 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—

in that order of priority.

### IMPORTANT NOTICE OF PURCHASER

#### 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 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:

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



The value of the lot may change between the day on which you sign the contract of that lot and the day on which you become the registered proprietor.

## Particulars of Sale

### VENDOR'S ESTATE AGENT

Name:			
Address:			
Telephone:		Fax:	
Email:		Ref:	

### VENDOR

Name: BR 190 KENILWORTH PTY LTD  
 Address: 28 Mount Pleasant Drive, Mount Waverley, VIC 3149  
 ACN/ABN: 613 380 537

### VENDOR'S LEGAL PRACTITIONER OR CONVEYANCER

Name: MLJ Law (Ref: JF:5109)  
 Address: [Suite 5, 6-8 Hamilton Place, Mount Waverley VIC 3149](#)  
 Telephone: 03 8555 4067  
 Email: Jose Fernandez <jf@mlj-law.com.au>  
[nirali@mlj-law.com.au](mailto:nirali@mlj-law.com.au)

### PURCHASER

Name:			
Address:			
Phone:		Email:	
Name:			
Address:			
Phone:		Email:	

### PURCHASER'S LEGAL PRACTITIONER OR CONVEYANCER

Name:			
Address:			
Telephone:		Fax:	
Email:		Ref:	

**LAND (GENERAL CONDITION 3 AND 9)**

The land is described in the table below—

**BW Lot ....., Stage 2 BEACONSFIELD WATTLE ESTATE**  
**Address: ..... Wattle Crescent, Beaconsfield 3807**  
**on unregistered plan of subdivision 805058 F**  
***being part of the land described in Parent Title: Volume: 10739 Folio: 702.***

**GOODS SOLD WITH THE LAND (GENERAL CONDITION 2.3(f))**

Goods sold with land are: The property is vacant land.

**PAYMENT (GENERAL CONDITION 11)**

Price: \$ \_\_\_\_\_  
Deposit: \$ \_\_\_\_\_ by / / 2021 (of which \$ \_\_\_\_\_ has been paid)  
Balance \$ \_\_\_\_\_ payable at settlement

**GST (GENERAL CONDITION 13)**

The price includes GST (if any) unless the words 'plus GST' appears in this box:

If this is a sale of a 'Farming Business' or 'Going Concern' then add the words 'Farming Business' or 'Going Concern' in this box:

If the Margin Scheme will be used to calculate GST then add the words 'Margin Scheme' in this box:

Margin Scheme

**SETTLEMENT (GENERAL CONDITION 10)**

The land is a lot on an unregistered Plan of Subdivision, in which case Settlement is due on the later of:

14 days after the Vendor gives notice in writing to the Purchaser of registration of the Plan of Subdivision.

The plan of subdivision must be registered within 18 months, (24) months if no other period is stated] of the day of sale (the sunset date) otherwise general condition 9(a) shall apply.



**LEASE (GENERAL CONDITION 1.1)**

At Settlement, the Purchaser is:

entitled to vacant possession.

~~OR~~

~~subject to a lease~~, particulars of which are:

~~attached; or~~

~~as follows:~~

**TERMS CONTRACT (GENERAL CONDITION 23)**

If this contract is intended to be a terms contract within the meaning of the **Sale of Land Act 1962** then add the words '**Terms Contract**' in this box:

**LOAN (GENERAL CONDITION 14) – NOT APPLICABLE AT AUCTION**

This contract is subject to a loan being approved:  Yes  No

Lender:

Loan amount: \$

Approval date:

**~~BUILDING & PEST REPORT (SPECIAL CONDITIONS 27 AND 28)~~**

~~This contract is subject to:~~

~~Building report. Provider:~~

~~Pest report. Provider:~~

**SPECIAL CONDITIONS**

This contract does not include any special conditions unless the words '**Special Conditions**' appear in this box:

SPECIAL CONDITIONS

\* \* \* \* \*

## Special Conditions

### 1. DEPOSIT

The deposit will be held in accordance with the provisions of Division 3 of the Sale of Land Act 1982. The deposit may be invested by the Vendor's Solicitors in an interest-bearing savings account in the name of the Vendor in trust for both parties. The interest to accrue on the deposit in which case will belong to the Vendor unless the Purchaser is entitled to a refund of the deposit in which case the interest (less bank and administrative charges) will belong to the Purchaser.

### 2. PLANNING

The Purchaser buys subject to any restrictions imposed by and to the provisions of the City Council Planning Scheme and any other Town Planning Acts or Schemes.

### 3. DEFAULT INTEREST

If the Purchaser defaults in the payment of any monies due under this Contract then interest at the rate 4% higher than the rate fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983 computed on the monies due and unpaid during the period of default will be paid by the Purchaser on demand to the Vendor without prejudice to any other rights of the Vendor.

### 4. GUARANTEE

If the Purchaser is or includes a corporation, the Purchaser must immediately after execution of this Contract of Sale procure the execution of the Guarantee and Indemnity attached to this Contract by each of the Directors of the Purchasing Corporation. If there is more than one Purchaser under this Contract the word "Purchasers" shall be substituted for the word "Purchaser" wherever appearing in the said Guarantee and Indemnity prior to the execution thereof.

### 5. MATHEMATICAL MISTAKE

The parties agree that where a mathematical mistake has occurred so that a party–

- (a) has received less than that party is entitled; or
- (b) has paid more than that party is required,

under the terms of the Contract, the party may, in addition to all other remedies of that party, within two months from the date on which completion took place, by notice in writing require the other party to pay to that party an amount equal to the financial measure of the mistake.

### 6. FAILURE TO COMPLETE

The parties acknowledge that in the event that the Purchaser fails to complete the purchase of the property on the due date under the Contract, the Vendor will suffer loss and damages. The Purchaser will in addition to interest chargeable on the balance of purchase monies outstanding under the Contract pay to the Vendor the following sums:

- (a) The cost of obtaining bridging finance to complete the Vendor's purchase of another property and interest charged on such bridging finance.
- (b) Interest payable by the Vendor under any existing mortgage over the property calculated from the due date for settlement.
- (c) Accommodation expenses necessarily incurred by the Vendor.
- (d) Storage cost of the Vendor's furniture and other possessions.
- (e) Legal costs and expenses as between Solicitor and client.

- (f) Penalties payable by the Vendor through any delay in completion of the Vendor's purchase of another property.

## 7. PROPERTY INSPECTION

The Purchaser acknowledges that the property has been purchased as a result of the Purchaser's own inspection and enquires and the Purchaser does not rely on any representation or warranty of any nature made by or on behalf of the Vendor or the Vendor's Agent. The Purchaser further acknowledges that the Vendor shall not be responsible to clear the land prior to settlement or otherwise.

## 8. ELECTRONIC CONVEYANCING

EC
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Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and special condition 8 applies, if the box is marked "EC".

- (a) This special condition has priority over any other provision to the extent of any inconsistency. This special condition applies if the contract of sale specifies, or the parties subsequently agree in writing, that settlement and lodgement of the instruments necessary to record the purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law.
- (b) A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically.
- (c) Each party must:
  - (i) be, or engage a representative who is, a subscriber for the purposes of the *Electronic Conveyancing National Law*,
  - (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 Electronic Conveyancing National law, and
  - (iii) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- (d) The vendor must open the Electronic Workspace ("workspace") as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.
- (e) The vendor must nominate a time of the day for locking of the workspace at least 7 days before the due date for settlement.
- (f) Settlement occurs when the workspace records that:
  - (i) the exchange of funds or value between financial institution in accordance with the instructions of the parties has occurred; or
  - (ii) if there is no exchange of funds or value, the documents necessary to enable the purchaser to become registered proprietor of the land have been accepted for electronic lodgement.
- (g) The parties must do everything reasonably necessary to effect settlement:
  - (i) electronically on the next business day, or
  - (ii) at the option of either party, otherwise than electronically as soon as possible – if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 8(f) has not occurred by 4.00 pm or 6.00 pm if the nominated time is after 4.00 pm.
- (h) Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.
- (i) The vendor must before settlement:
  - (i) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,
  - (ii) direct estate agent to give the keys to the purchaser or the purchaser's nominee on notification of settlement by the vendor, the vendor's subscriber or the Electronic Network Operator,

- (iii) deliver all other physical documents and items (other than the goods sold by the contract) to which the purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the vendor's subscriber or, if there is no vendor's subscriber, confirm in writing to the purchaser that the vendor holds those documents, items and keys at the vendor's address set out in the contract, and
  - (iv) direct all the vendor's subscriber to give (or, if there is no vendor's subscriber, give) all those documents and items, and any such keys, to the purchaser or the purchaser's nominee on notification of settlement by the Electronic Network Operator.
- (j) The vendor must, at least 7 days before the due date for settlement, provide the original of any document required to be prepared by the vendor in accordance with general condition 6.

## **9. FOREIGN RESIDENT CAPITAL GAINS WITHHOLDING**

- (i) Interpretation
- Words defined or used in Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953 (Cth) ("TAA") have the same meaning in this special condition unless the context requires otherwise.
- (ii) Amount to be withheld
- Only if the purchaser is required to pay the Commissioner on amount in accordance with section 14-200(3) or section 14-235 of Schedule 1 of the TAA ("the amount"), then:
- (i) the amount is to be deducted from the vendor's entitlement to the contract consideration; and
  - (ii) if there is no consideration or non-monetary consideration, the vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration; and
  - (iii) special condition 9(c) applies.
- (iii) Purchaser and vendor obligations
- The purchaser must:
- (i) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations in this special condition; and
  - (ii) ensure that the representative does so.
- (iv) The purchaser must (and the terms of engagement for the purchaser's representative are taken to include instructions to) have regard to the vendor's interests and:
- (i) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the purchaser (or its representative) in accordance with this special condition if the sale of the property settles;
  - (ii) promptly provide the vendor with proof of payment;
  - (iii) otherwise comply, or ensure compliance with, this special condition; and
  - (iv) where the amount is not payable to the Commissioner, return it promptly to the vendor and the amount is a charge on the land until payment of the amount is made in accordance with this special condition;
- despite:
- (v) any contrary instructions, other than from both the purchaser and the vendor; and
  - (vi) any other provisions in this contract to the contrary.
- (v) The purchaser (and its representative) is taken to have complied with the obligations in special condition 9(d) if:
- (i) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and

- (ii) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- (vi) Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 of the TAA must be given to the purchaser at least 5 business days before the due date for settlement.
- (vii) The vendor must provide the purchaser with the information needed for the purchaser to comply with the purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 of the TAA. The information must be provided within 5 business days of request by the purchaser. The vendor warrants that the information the vendor provides is true and correct.
- (viii) The purchaser is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.
- (ix) The requirements of this special condition which are not or cannot be satisfied by settlement will survive and will not in any way be removed or be satisfied or determined on settlement.

#### **10. GST WITHHOLDING**

- (a) Words and expressions defined or used in Subdivision 14-E of Schedule 1 to the Taxation Administration Act 1953 (Cth) or in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this special condition unless the context requires otherwise. Words and expressions first used in this special condition and shown in italics and marked with an asterisk are defined or described in at least one of those Acts.
- (b) This special condition 10 applies if the purchaser is required to pay the Commissioner an *\*amount* in accordance with section 14-250 of Schedule 1 to the Taxation Administration Act 1953 (Cth) because the property is *\*new residential premises* or *\*potential residential land* in either case falling within the parameters of that section, and also if the sale attracts the operation of section 14-255 of the legislation. Nothing in this special condition 10 is to be taken as relieving the vendor from compliance with section 14-255.
- (c) The amount is to be deducted from the vendor's entitlement to the contract *\*consideration* and is then taken to be paid to the vendor, whether or not the vendor provides the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the Taxation Administration Act 1953 (Cth). The vendor must pay to the purchaser at settlement such part of the amount as is represented by non-monetary consideration.
- (d) The purchaser must:
  - (i) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the purchaser's obligations under the legislation and this special condition; and
  - (ii) ensure that the representative does so.
- (e) The terms of the representative's engagement are taken to include instructions to have regard to the vendor's interests relating to the payment of the amount to the Commissioner and instructions that the representative must:
  - (i) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this special condition on settlement of the sale of the property;
  - (ii) promptly provide the vendor with evidence of payment, including any notification or other document provided by the purchaser to the Commissioner relating to payment; and
  - (iii) otherwise comply, or ensure compliance, with this special condition;despite:
  - (iv) any contrary instructions, other than from both the purchaser and the vendor; and
  - (v) any other provision in this contract to the contrary.

- (f) The representative is taken to have complied with the requirements of special condition 10(e) if:
  - (i) settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd or any other electronic conveyancing system agreed by the parties; and
  - (ii) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.
- (g) The purchaser may at settlement give the vendor a bank cheque for the amount in accordance with section 16-30 (3) of Schedule 1 to the Taxation Administration Act 1953 (Cth), but only if:
  - (i) so agreed by the vendor in writing; and
  - (ii) the settlement is not conducted through an electronic settlement system described in special condition 8.

However, if the purchaser gives the bank cheque in accordance with this special condition 10, the vendor must:

- (iii) immediately after settlement provide the bank cheque to the Commissioner to pay the amount in relation to the supply; and
  - (iv) give the purchaser a receipt for the bank cheque which identifies the transaction and includes particulars of the bank cheque, at the same time the purchaser gives the vendor the bank cheque.
- (h) The vendor must provide the purchaser with a GST withholding notice in accordance with section 14-255 of Schedule 1 to the Taxation Administration Act 1953 (Cth) at least 14 days before the due date for settlement.
- (i) A party must provide the other party with such information as the other party requires to:
  - (i) decide if an amount is required to be paid for the quantum of it, or
  - (ii) comply with the purchaser's obligation to pay the amount,in accordance with section 14-250 of Schedule 1 to the Taxation Administration Act 1953 (Cth). The information must be provided within 5 business days of a written request. The party providing the information warrants that it is true and correct.
- (j) The vendor warrants that:
  - (i) at settlement, the property is not new residential premises or potential residential land in either case falling within the parameters of section 14-250 of Schedule 1 to the Taxation Administration Act 1953 (Cth) if the vendor gives the purchaser a written notice under section 14-255 to the effect that the purchaser will not be required to make a payment under section 14-250 in respect of the supply, or fails to give a written notice as required by and within the time specified in section 14-255; and
  - (ii) the amount described in a written notice given by the vendor to the purchaser under section 14-255 of Schedule 1 to the Taxation Administration Act 1953 (Cth) is the correct amount required to be paid under section 14-250 of the legislation.
- (k) The purchaser is responsible for any penalties or interest payable to the Commissioner on account of non-payment or late payment to the amount, except to the extent that:
  - (i) the penalties or interest arise from the vendor's failure, including breach of a warranty in special condition 10(j); or
  - (ii) the purchaser's reasonable belief that the property is neither new residential premises nor potential residential land requiring the purchaser to pay an amount to the Commissioner in accordance with section 14-250 (1) of Schedule 1 to the Taxation Administration Act 1953 (Cth).The vendor is responsible for any penalties or interest payable to the Commissioner on account of non-payment of the amount if either exception applies.
- (l) This special condition will not merge on settlement.

## 11. PAYMENT

General condition 11 is replaced with the following:

- 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 Payments may be made or tendered:
- (a) up to \$1,000 in cash; or
  - (b) by cheque drawn on an authorised deposit-taking institution; or
  - (c) by electronic funds transfer to a recipient having the appropriate facilities for receipt.
- However, unless otherwise agreed:
- (d) payment may not be made by credit card, debit card or any other financial transfer system that allows for any chargeback or funds reversal other than for fraud or mistaken payment, and
  - (e) any financial transfer or similar fees or deductions from the funds transferred, other than any fees charged by the recipient's authorised deposit-taking institution, must be paid by the remitter.
- 11.5 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.
- 11.6 Payment by electronic funds transfer is made when cleared funds are received in the recipient's bank account.
- 11.7 Before the funds are electronically transferred the intended recipient must be notified in writing and given sufficient particulars to readily identify the relevant transaction.
- 11.8 As soon as the funds have been electronically transferred the intended recipient must be provided with the relevant transaction number or reference details.
- 11.9 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- 11.10 For the purpose of this general condition 'authorised deposit-taking institution' means a body corporate for which an authority under section 9(3) of the Banking Act 1959 (Cth) is in force.

**12. ACCEPTANCE OF TITLE**

General condition 12.4 is added:

- ~~12.4 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.~~

**13. TAX INVOICE**

General condition 13.3 is replaced with the following:

- 13.3 If the vendor makes a taxable supply under this contract (that is not a margin scheme supply) and:
- (a) the price includes GST; or
  - (b) the purchaser is obliged to pay an amount for GST in addition to the price (because the price is "plus GST" or under general condition 13.1(a), (b) or (c)),
- the purchaser is not obliged to pay the GST included in the price, or the additional amount payable for GST, until a tax invoice has been provided.

**14. ADJUSTMENTS**

General condition 15.2(b) is replaced with the following:

- 15.2 (b) Land tax must be adjusted between the parties on the full amount assessed by the State Revenue Office in relation to the Site, regardless of whether land tax would be payable on a single holding basis.

General condition 15.3 is added:

- 15.3 The purchaser must provide copies of all certificates and other information used to calculate the adjustments under general condition 15, if requested by the vendor.

**15. SERVICE**

General condition 17 is replaced with the following:

- 17.1 Any document required to be served by or on any party may be served by on the legal practitioner or conveyancer for that party.
- 17.2 A document being a cooling off notice under section 31 of the Sale of Land Act 1962 or a notice under general condition 14.2 (ending the contract if the loan is not approved) may be served on the vendor's legal practitioner, conveyancer or estate agent even if the estate agent's authority has formally expired at the time of service.
- 17.3 A document is sufficiently served:
- (a) personally, or
  - (b) by pre-paid post, or
  - (c) in any manner authorised by law or by the Supreme Court for service of documents, including any manner authorised for service on or by a legal practitioner, whether or not the person serving or receiving the document is a legal practitioner, or
  - (d) by email.
- 17.4 Any document properly sent by:
- (a) express post is taken to have been saved on the next business day after posting, unless proved otherwise;
  - (b) priority post is taken to have been served on the fourth business day after posting, unless proved otherwise;
  - (c) regular post is taken to have been served on the sixth business day after posting, unless proved otherwise;



- (d) 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.
- (e) The expression 'document' includes 'demand' and 'notice', and 'service' includes 'give' in this contract.

## 16. NOTICES

General condition 21 is replaced by the following:

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

## 17. ~~AUCTION~~

~~If the property is to be sold by auction, the Rules for the conduct of the auction shall be set out in Schedule 1 of the Sale of Land (Public Auctions) Regulations 2014 or any rules prescribed by regulation which modify or replace those Rules.~~

~~REIV Rules for the conduct of Public Auctions of Land:~~

- ~~(i) The auctioneer may make one or more bids on behalf of the vendor of the land at any time during-~~
- ~~(ii) The auctioneer may refuse any bid.~~
- ~~(iii) The auctioneer may determine the amount by which the bidding is to be advanced.~~
- ~~(iv) The auctioneer may withdraw the property from the sale at any time.~~
- ~~(v) The auctioneer may refer a bid to the vendor at any time before the conclusion of the auction.~~
- ~~(vi) The auctioneer will not accept any "late bids" once the property has been knocked down and declared "sold".~~
- ~~(vii) In the event of a dispute concerning a bid, the auctioneer may re-submit the property for the sale at the last undisputed bid or start the bidding again.~~
- ~~(viii) If a reserve price has been set for the property and the property is passed in below that reserve price, the vendor will first negotiate with the highest bidder for the purchase price.~~

## 18. RESTRICTIONS

The property/land is sold subject to any restriction as to user imposed by law or by any authority with power under any legislation to control the use of property/land. Any such restriction shall not constitute a defect in title or a matter of title or effect the validity of this contract and the purchaser shall not make any requisition or objection or claim to be entitled to compensation or damages from the vendor in respect of such restriction.

The Purchaser further assumes the following encumbrances:

- a) All registered and any unregistered and implied easements, covenants, and restrictive covenants (if any) affecting the property/land including those disclosed in the Vendor's statement.
- b) Any easements and restrictions created by the Plan.
- c) The following encumbrances specific to the Development:
  - i. The provisions of any agreement which the Vendor may be required to enter into with any responsible authority in relation to the plan including but not limited to an agreement under section 173 of the Planning and Environment Act 1987 (Vic);
  - ii. The requirements of the Planning Permit;

**19. REPRESENTATION WARRANTY**

- (a) The purchaser further acknowledges that the vendor has not nor has anyone on the vendor's behalf made any representation or warranty as to the fitness for any particular purpose or otherwise of the property or that any structures comply with the current or any building regulation and the purchaser expressly releases the vendor and/or the servants or agents of the vendor from any claims demands in respect of such representation or warranty.
- (b) The purchaser shall comply with the Design Guidelines, if any, and acknowledge receipt of a copy of them as referred to in the Restrictions and as attached to the Vendor's Statement forming part of this Contract of Sale.
- (c) The purchaser acknowledges that the Design Guidelines are current as at the Day of Sale and are accurate for land contained only in the Plan of Subdivision, and that the vendor reserves the right to amend the Design Guidelines as reasonably necessary from time to time for land contained in the Plan of Subdivision, or for other parts of the Development Land at its absolute discretion.
- (d) If the vendor amends the Design guidelines, the purchaser must not make any requisition or objection or be entitled to any compensation from the vendor in respect of any such amendment.

**20. VENDOR'S STATEMENT**

The Purchaser confirms and acknowledges receiving the Vendor's Statement or Section 32 prior to executing this contract.

**21. CONTAMINATION**

The property sold is vacant land, the purchaser accepts the property in its present condition and state of repair and latent or patent defects including any contamination by any hazardous substances. The purchaser will make no objection, requisition, or claim for compensation nor have any right of rescission or termination arising from the existence of any contaminants in or on the property.

**22. IMPROVEMENTS**

The property is sold on the basis of existing improvements and the purchaser shall not make any requisition or claim any compensation for any deficiency or defect in the such improvements as to their suitability for occupation or otherwise including any requisition in relation to the issue or non-issue of Building Permits and/or completion of inspections by the relevant authorities in respect of any such improvements.

**23. CONNECTION OF SERVICES**

The purchaser acknowledges that consumable services (Services) are 'connected' where such services are provided by an authority connected to the property and operating on the Day of Sale). The vendor may terminate any account with a service provider prior to Settlement. In such circumstances the purchaser is responsible for reconnecting any disconnected Service. Any fee for connection of supply or installation of meters for the services shall be payable by the purchaser. The purchaser should inquire with the appropriate authorities as to the availability (and cost) of providing any essential services not connected to the property.

**24. FIRB APPROVAL**

The purchaser warrants that the provisions of the Foreign Acquisitions and Takeovers Act 1975 (Cth) do not require the purchaser to obtain consent of the Foreign Investments Review Board (FIRB) to enter this contract. If there is a breach of the warranty contained in this Special Condition (whether intentional or not) the purchaser must indemnify and compensate the vendor for any loss, damage or cost which the vendor incurs as a result of the breach. The warranty and indemnity in this Special Condition do not merge on completion of this contract.

**25. FRACTIONAL INTEREST**

- (a) If there is more than one purchaser, it is the purchaser's responsibility to ensure that this contract correctly records at the Date of Sale the proportions in which the purchasers are purchasing the property (Proportions).
- (b) If the Proportions recorded in the transfer differ from those recorded in the contract, it is the purchasers' 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 Estate 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 will not merge on completion.

**26. PAYMENT BY EFT**

- (a) Subject to general condition 11.3, the purchaser may pay the deposit or any part of it or any amount due under this contract by way of electronic funds transfer to the vendor's estate agent, legal practitioner or conveyancer.
- (b) The purchaser must notify the vendor's estate agent, legal practitioner or conveyancer in writing of sufficient particulars to readily identify the relevant conveyancing transaction and the reference details recorded against the money electronically transferred to the transaction number, before or as soon as the money has been remitted to the purchaser's financial institution for transfer to the intended recipient. The purchaser must provide reasonable evidence of the electronic remittance to the financial institution if requested by the intended recipient.
- (c) Payment is made when cleared funds are received in the intended recipient's bank account.
- (d) Each party must do everything reasonably necessary to assist the other party trace and identify the recipient of any mistaken payment and to recover the mistaken payment.

**27 PURCHASER ACKNOWLEDGEMENTS**

The purchaser acknowledges:

- (a) having sufficient opportunity to carry out investigations and to make enquiries in relation to the property before signing this contract;
- (b) that no information, representation or warranty provided or made by or on behalf of the vendor other than expressed in this contract was provided or made with the intention or knowledge that it would be relied upon by the purchaser;
- (c) that no information, representation or warranty referred to in Special Condition 29B has been relied upon by the purchaser;
- (d) that the purchaser relied only on the purchaser's inspection of, and searches and enquiries in connection with, the property when entering this contract; and that to the maximum extent permissible by law and equity, the vendor is not liable to the purchaser in connection with any information, representation or warranty provided or made by or on behalf of the vendor

**28. PLAN**

**A. Conditional Sale**

This contract is subject to the condition subsequent that the plan is registered by the registration date. The period between the day of sale and the registration date is the specified period for the purchases of section 9AE of the Sale of Property/land Act.

**B. Vendor's Endeavours**

The vendor will, at its own cost, endeavour to have the plan certified, endorsed with a statement of compliance, and registered under Part 4 of the Subdivision Act.

C Right to Terminate

If the plan is not registered within 24 months from the date of execution of the contract (Registration date) by the registrar by the registration date then either party may terminate this contract by notice in writing to the other party. A notice under this Special Condition 28C will have no effect if the other party receives it after the plan is registered.

Consequences of Termination

- (i) If this contract is terminated pursuant to Special Condition 28C, the deposit and any interest accrued (less bank and government charges) will be refunded to the purchaser.
- (ii) The purchaser must not claim any compensation if this contract is terminated pursuant to Special Condition 28C.
- (iii) The right to a refund of the deposit and any interest accrued (less bank and government charges) shall be the sole right of the purchaser in connection with such termination.

**29 AMENDMENTS TO PLAN**

- A. Subject to section 9AC of the Sale of Property/land Act, the Vendor may make such amendments to the plan that:
- (i) may be necessary to:
    - i. accord with surveying practice; or
    - ii. comply with any requirement, recommendation or requisition of an authority or registrar; or
  - (ii) in the opinion of the vendor (acting reasonably) are required or necessary for the purposes of the development, which may include:
    - (a) alterations required for the adequate servicing of the Site or any part of it;
    - (b) creating additional lots including reducing or altering the common property to create such lots.
- B. The Vendor will advise the purchaser in writing of any proposed amendment to the plan required by the registrar or requested by the vendor within 14 days after the receipt of the requirement of the registrar or the making of the request by the vendor (as the case may be).
- C. The purchaser must advise the vendor within 14 days of receipt of the proposed amendments (time being of the essence) whether the purchaser consents to those amendments.
- D. The purchaser agrees to accept the property described on the plan as ultimately registered notwithstanding that there may be minor variations or discrepancies between the lot or lots hereby sold and the lot or lots on the registered plan.
- E. Without limiting any other provision in this Special Condition the purchaser acknowledges and agrees that:
- (i) the vendor may create additional lots by further subdividing any lots in any stage of the plan which may result in reducing the area of the common property; and
  - (ii) if on the day of sale the property/land is described as more than one lot, the vendor may consolidate those lots into one or more titles as the vendor sees fit (but is not obliged to do so).
- F. The purchaser agrees not to object because of:
- (i) any amendment or alteration to the plan which does not materially affect the property/land (as determined by the Law Institute Property Law Dispute Resolution Committee of Victoria); or
  - (ii) the creation of any additional lots; or
  - (iii) the consolidation of any lot with another lot or lots; or
  - (iv) any alleged misdescription of the property/land or deficiency in its area or measurements; or
  - (v) any renumbering of stages or lots on the plan,
- nor will the purchaser call upon the vendor to amend title or pay all or any part of the cost of doing so.**
- G. The purchaser agrees that (without limitation) an amendment to the plan which results in a change to the area of the property of less than 5% is a minor variation or discrepancy and does not materially affect the property/land.

### 30 ENCUMBRANCES

i. Purchaser buys subject to Encumbrances

(a) The purchaser:

- (i) admits that the property is sold subject to the provisions of the Subdivision Act;
- (ii) buys the property subject to:
  - (a) the Encumbrances.
  - (b) all restrictions on its use or development that are imposed or prescribed by the laws that apply to it;
  - (c) all easements and encumbrances affecting the site including those created or implied by the Subdivision Act; and
  - (d) the rights of the vendor under this contract; and

ii. Further encumbrances

(b) The purchaser acknowledges that the vendor:

- (i) may create or grant easements, covenants, restrictions and other rights and obligations affecting the whole or any part of the site;
- (ii) may enter into an agreement under section 173 of the *Planning and Environment Act 1987* (Vic);
- (iii) may grant leases or other occupation rights to third parties over the site (excluding the property) including, without limitation, statutory authorities and suppliers of utilities;
- (iv) is entitled to require that:
  - (a) the transfer incorporates a covenant; or
  - (b) create an easement or other restriction that will burden the property/land,

**if any one or more of these are:**

  - (v) required by any authority;
  - (vi) required for the certification or registration of the plan; or
  - (vii) in the opinion of the vendor (acting reasonably), necessary or desirable for the development, use, occupation, proper management or adequate servicing of the site or of any part of it.
- (viii) Section 10(1) of the Sale of Property/land Act does not apply to this contract in respect of the final location of an easement shown on the certified plan.

### 31 DISCLOSURE OF SURFACE LEVEL WORKS

The vendor notifies the purchaser pursuant to section 9AB of the Sale of Property/land Act details of all works affecting the natural surface level of the property/land in the lot sold or any property/land abutting the lot sold in the same subdivision of as the lot which:

- (a) have been carried out on that property/land after the certification of the plan and before the date of this contract; or
- (b) are at the date of this contract being carried out or are proposed to be carried out on that property/land, are set out in the Plan of Surface Level Works.

### 32 CAVEAT

A. No caveat to be lodged

The purchaser must not lodge nor cause or allow any person claiming through it or acting on its behalf to lodge any caveat over any certificate of title relating to the site, the development, the property/land or the property including over any certificate of title that issues upon registration of the plan by the registrar.

B. Purchaser's acknowledgement

The purchaser acknowledges that breach of Special Condition 31A:

- (i) may delay or prevent registration of the plan by the registrar;
- (ii) may delay or prevent settlement by the vendor of sales of all or some of the lots; and

- (iii) to the extent that it delays any such settlement, entitles the vendor to recover from the purchaser interest, holding costs and other charges including under any other contract of sale for any lot or any agreement relating to financing of the development.

**C. Appointment as attorney**

The purchaser irrevocably appoints the vendor and each director, officer and manager of the vendor as its attorney to sign and lodge a withdrawal or any caveat lodged by the purchaser in breach of Special Completion of Development

**33. Pre-settlement inspection**

- (a) The purchaser may inspect the condition of the property before settlement is due by making an appointment with the vendor's agent to inspect the premises..
- (b) The vendor retains the right to:
  - (i) set the time and date of the purchaser's inspection appointment;
  - (ii) limit the duration of an inspection appointment; and
  - (iii) limit the number of people attending an inspection appointment.
- (c) The purchaser is entitled to only one inspection of the property before the date settlement is due.

**34 OUTGOINGS**

**A. Statement of adjustments**

The Purchaser's legal practitioner will prepare and provide to the Vendor or the Vendor's legal practitioner or conveyancer the statement of adjustments taking into account all outgoing before settlement and after the purchaser or the purchaser's legal practitioner or conveyancer makes an appointment for settlement. This is an essential term of this contract.

**B. Supplementary rates**

If any supplementary or additional rates, fees, charges or outgoings are assessed, levied or charged against the property after registration of the plan, the purchaser will be solely responsible to bear or pay the supplementary or additional amount.

**C. Property/land tax**

- (a) The purchaser acknowledges that the State Revenue Office may group all the lots in the plan and assess property/land tax against the vendor in respect of the property based upon the aggregate of the unimproved values of each lot in the plan.
- (b) Notwithstanding that on a single holding basis no property/land tax may be assessable in relation to the property/land the purchaser agrees that it will pay to the State Revenue Office or reimburse the vendor for property/land tax on the property/land calculated by using the proportional amount of property/land tax attributable to the property shown in the vendor's property/land tax assessment for the year during which settlement occurs (or where such assessment has not issued at the settlement date, the proportional amount of property/land tax attributed to the property shown in a certificate issued in respect of the property under Section 105 of the *Property/land Tax Act 2005*);

**35 DEFAULT**

**A. Purchaser to pay interest**

If the purchaser fails to pay an amount due under this contract, it must pay interest on that amount at the interest rate from the date on which the amount should have been paid until the date it is paid. The interest to be paid under this Special Condition must be paid on the date of actual settlement.

**B. Time remains of the essence**

The purchaser's obligation to pay interest under Special Condition 40A does not mean that time is not of the essence for the performance of the purchaser's obligations under this contract.

**C. Other rights unaffected**

Nothing in this Special Condition limits the rights of the vendor if the purchaser defaults under this contract.

- D. Property/land tax  
If, as a result of a breach of this contract by the purchaser, the property is registered in the name of the vendor at midnight on 31 December following the settlement date, property/land tax will be adjusted on the basis that the purchaser pays all of the property/land tax assessed, charged and levied on the vendor in respect of the property after the settlement date.

### 36 VENDOR'S RIGHTS

- A. Vendor's right not to proceed  
The Vendor may within 24 months after the day of sale end this contract by notice to the purchaser if:
- (a) in the vendor's opinion it has been or will be unable to enter into a sufficient number of contracts to sell lots on the plan to enable the development to proceed; or
  - (b) it is unable to obtain finance for the development on terms acceptable to it.
- B. Consequences of termination
- (a) If this contract is terminated pursuant to Special Condition 41A, the deposit and any interest accrued (less bank and government charges) will be refunded to the purchaser.
  - (b) The purchaser must not claim any compensation if this contract is terminated pursuant to this Special Condition.
  - (c) The right to a refund of the deposit and any interest accrued (less bank and government charges) shall be the sole right of the purchaser in connection with such termination.
- C. Completion of the development
- (c) The vendor may, for the purposes of completion of the development, after settlement:
    - (a) carry out works (including demolition, alterations, refurbishments and repairs) on the development;
    - (b) use, operate, install, repair, maintain, remove, replace and temporarily interrupt services; and
    - (c) appoint agents or others to exercise any of the vendor's rights,**but in doing so, the vendor must take reasonable steps to minimise interference with the purchaser's enjoyment and use of the property.**
- D. Embedded Network System
- (a) The vendor may include in the development an embedded network system for the supply of gas, electricity and/or telecommunications to the common property and lot owners .
  - (b) For the embedded network system, the vendor may install service wires, cables, conduits and pipe shafts under, over or within any of the lots or common property.
  - (c) The vendor may itself enter into any agreement required to give effect to the embedded network system for the supply of gas, electricity and/or telecommunications.
- E. Vendor may conduct activities  
The purchaser acknowledges that both before and after the date of actual settlement, the vendor and the vendor's associates may:
- (a) conduct selling activities from the site;
  - (b) place and maintain on and outside of the site (excluding the property) signs in connection with those selling activities; and
- F. No Objection
- (d) The purchaser may not object because of anything contemplated by the above special conditions.

### 37. DEALINGS

- A. No resale  
The purchaser must not prior to settlement, agree to sell or agree to transfer the property/land without the prior written consent of the vendor (which may be given or withheld at the vendor's absolute discretion) until every lot on the plan has been sold by the vendor.
- B. Dealings by the vendor
- (a) The purchaser acknowledges and agrees that the vendor may assign its rights under this contract to a third party but that it will remain liable to the purchaser for the performance of the vendor's obligations under this contract.

- (b) The vendor will notify the purchaser if it assigns its rights under this contract.
- (c) The purchaser agrees not to object if the vendor assigns its rights under this contract.

**C. Mortgages and charges**

The vendor may grant mortgages or charges over the site or the property/land at any time up till settlement.

.....  
**FURTHER SPECIAL CONDITIONS**

1. The Vendor shall provide a rebate of \$5,000.00 to the Purchaser if the Purchaser completes the construction of a house together with acceptable landscaping, fenced and driveway completed in accordance with the Building Design Guidelines within 18 months from the date of Settlement.
2. The Purchaser agrees with the Vendor that the Purchaser shall not make any Claim against the Vendor for any contribution to the cost of undertaking the Fencing Works or any other types of fencing on any other part of the Property or the Development Land pursuant to the provisions of the Fences Act 1968 (Vic), including any sums for liabilities which the Vendor may (whether or not it was aware of any) have incurred with any adjoining owners. However in the event the Vendor constructs the paling fence the Purchaser shall contribute 50% for the cost of the construction and the same shall be adjusted at settlement in favour of the Vendor.
3. Solar Panel rebate of \$2,500 and a further Solar Battery rebate \$2500.00 will be paid to Purchaser provided the House including Driveway is constructed within 18 months from date of Settlement and when we receive the Tax Invoice

.....  
Purchaser's Initial.....

Vendor's Initial.....



## General Conditions

### 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 former 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 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 section 137B and 13C 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 regulation made under the *Building Act 1993*.
- 2.7 Words and phrases used in general condition 2.6 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 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 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(a)(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 purchaser 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 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 of 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 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'.

## **MONEY**

### **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 profit in accordance with 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 am and 4.00 pm 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 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:
  - (b) 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

- (c) the land is treated as the only land of which the vendor is owner (as defined in the *Land Tax 2005*); and
- (d) the vendor is taken to own the land as a resident Australian beneficial owner; and
- (e) 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 2020*.
- 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 of 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 the receipt of rents and profits unless the vendor satisfied section 29M of the *Sale of Land Act 1962*; and
- (b) the deposit and all other money payable under the contract (other than money payable in excess of the amount required to so discharge the mortgage) must be paid to a legal practitioner or conveyancer or a licenced estate agent to be applied in or towards discharging the mortgage.

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

- (i) 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;
- (ii) 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;
- (iii) 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;
- (iv) the vendor may pay any renewal premiums or take out the insurance if the purchaser fails to meet these obligations;
- (v) insurance costs paid by the vendor under paragraph (d) must be refunded by the purchaser on demand without affecting the vendor's other rights under this contract;
- (vi) 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;
- (vii) the property must not be altered in any way without the written consent of the vendor which must not be unreasonably refused or delayed;
- (viii) the purchaser must observe all obligations that affect owners or occupiers of land;
- (ix) 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 may 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 REMENDED**

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.

\* \* \* \* \*

## Deed of Guarantee & Indemnity

Date: .....

### Parties:

Name: .....  
Address: .....

Name: .....  
Address: .....

(Guarantor)

### Recitals:

- A. The Guarantor has agreed to give the guarantee and to grant the undertakings contained in this Deed in favour of Estate of BR 190 KENILWORTH PTY LTD (Vendor) in relation to the obligations of ..... (Purchaser) under the Contract of Sale (Contract) for the sale of the property as described in the Contract.
- B. The Guarantor agrees that the Guarantor has received consideration for entering into this Deed including, among other things, the mutual promises contained in this Deed.

### Operative Provisions:

1. The Guarantor guarantees to the Vendor prompt performance of all the obligations of the Purchaser contained or implied in the Contract.
2. If the obligation of the Purchaser is to pay money, the Vendor may if the Purchaser has not paid the money when due immediately recover the money from the Guarantor as a liquidated debt without first commencing proceedings or enforcing any other right against the Purchaser or any other person.
3. Indemnity
  - (a) The Guarantor indemnifies the Vendor against any cost (including legal fees and disbursements on a full indemnity basis and any Counsel or consultant's fees and expenses at the rate charged to the Vendor), liability, loss, fine, penalty, suit, claim or damage that the Vendor may suffer because of:
    - (i) a failure by the Purchaser to pay any money to the Vendor under this Contract; or
    - (ii) the Vendor having no legal right to recover any money from the Purchaser under this Contract; or
    - (iii) any money payable by the Purchaser to the Vendor under the Contract not otherwise being payable.
  - (b) The indemnity in this clause:
    - (i) is in addition to and separate from the guarantee in the preceding Special Condition; and
    - (ii) is a principal obligation and is independent of the Purchaser's obligations to the Vendor.
  - (c) The Guarantor must pay the Vendor the amount owing under the indemnity in this clause on demand by the Vendor.
4. This Deed is a continuing security, and is not discharged or prejudicially affected by any settlement of accounts, but remains in full force until a final release is given by the Vendor.

5. The Guarantor's liability under this Deed is not affected by:
  - (a) the granting of time, forbearance or other concession by the Vendor to the Purchaser or any Guarantor;
  - (b) any delay or failure by the Vendor to take action against the Purchaser or any Guarantor;
  - (c) an absolute or partial release of the Purchaser or any Guarantor or a compromise with the Purchaser or any Guarantor;
  - (d) a variation, novation, renewal or assignment of this Contract by the Vendor, whether or not this increases the liability of the Purchaser;
  - (e) the termination of this Contract;
  - (f) the fact that this Contract is wholly or partially void, voidable or unenforceable;
  - (g) the non-execution of this Contract by the Vendor or one or more of the persons named as Guarantor or the unenforceability of the guarantee or indemnity against one or more of the Guarantors;
  - (h) the exercise or purported exercise by the Vendor of its rights under this Contract;
  - (i) a problem that means:
    - (i) the Vendor has no legal right to recover any money from the Purchaser;
    - (ii) the Purchaser does not owe any money that otherwise would be payable under this Contract;
    - (iii) the Vendor knew of the problem, or should have known; or
    - (iv) the Purchaser could never have been required to pay the Vendor the amount or amounts payable pursuant to this Contract.
  - (j) the nomination by the Purchaser of a nominee or substitute purchaser under this Contract.
6. The Guarantor's liability is not discharged by a payment to the Vendor, which is later avoided by law. If that happens, the Vendor, the Purchaser and the Guarantor will be restored to their respective rights and obligations as if the payment had not been made.
7. If a liquidator or trustee in bankruptcy disclaims this Contract, the Guarantor indemnifies the Vendor against all resulting loss.
8. Until the Vendor has received all money payable to it by the Purchaser:
  - (a) the Guarantor must not prove or claim in any liquidation, bankruptcy, composition, arrangement or assignment for the benefit or creditors of the Purchaser; and
  - (b) the Guarantor must hold any claim it has and any dividend it receives on trust for the Vendor.
9. Until the Guarantor's liability under this Deed is discharged the Guarantor may not, without the consent of the Vendor:
  - (a) claim the benefit or seek the transfer (in whole or in part) of any other guarantee, indemnity or security held or taken by the Vendor;
  - (b) make a claim or enforce a right against the Purchaser or any other guarantor or against the estate or any of the property of any of them (except for the benefit of the Vendor) or
  - (c) raise a set-off or counterclaim available to it or the Purchaser against the Vendor in reduction of its liability under this Deed.
10. Costs and expenses
  - (a) Reimbursement on demand

The Guarantor agrees to pay or reimburse the Vendor on demand for:

    - (i) its costs, charges, and expenses of making, enforcing and doing anything in connection with this Deed, including all costs actually payable by the Vendor to its legal representatives (whether under a costs agreement or otherwise); and

(ii) all taxes (except income tax) which are payable in connection with this Contract or any payment, receipt or other transaction contemplated by it.

(b) Application of money

Money paid to the Vendor by the Guarantor must be applied first against payment of costs, charges and expenses under this special condition and then against other obligations under this Contract.

11. If the Vendor assigns its rights under this Contract, the benefit of the guarantee extends to the assignee and continues concurrently for the benefit of the Vendor regardless of the assignment unless the Vendor releases the Guarantor in writing.

**SIGNED SEALED AND DELIVERED** by the said

X

.....  
*Print name of guarantor*

.....  
*Signature of guarantor*

in the presence of:

X

.....  
*Signature of witness*

.....  
*Print name of witness*

**SIGNED SEALED AND DELIVERED** by the said

X

.....  
*Print name of guarantor*

.....  
*Signature of guarantor*

in the presence of:

X

.....  
*Signature of witness*

.....  
*Print name of witness*

\* \* \* \* \*

## Schedule 1

### RESIDENCY STATUS / FIRB / PROOF OF IDENTITY

The Purchaser provides the following information to the Vendor regarding the Purchaser's residency status:

Yes  No

The Purchaser is an Australian citizen:

Yes  No

The Purchaser is a foreign national but with the right of permanent residence in Australia:

Yes  No

The Purchaser is a "foreign person" within the meaning of Section 5 of the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth) and thus needing approval from the FIRB to complete the purchase of Property.

Yes  No

As verification of identity, the Purchaser has provided to the Vendor the following proof of identification and annexed a copy to this Contract.

[select one]

**Identification:**  Driver's Licence  Passport  Medicare Card

**Licence / Passport / Medicare Number:** \_\_\_\_\_

**Expiry Date:** \_\_\_\_ / \_\_\_\_ / 20\_\_\_\_

\* \* \* \* \*