

# CONTRACT FOR SALE OF HOUSE AND LAND

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

## Item

## Item Schedule

### 1. CONTRACT DATE

Clause 1(12)

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

### 2. SELLER'S AGENT

Clause 36

Name: **Michael Kettle Realty P/L ATF Kettle Family Trust T/as First National Caloundra**  
Address: **1 Oval Ave, Caloundra QLD 4551**  
ABN: **50010926495** Phone: **( 07 ) 5438 2166** Mobile: **0419 728 807**  
Email: **admin@fncaloundra.com.au**  
Licence Number: **3081812** Expiry Date: **29/10/2021**

### 3. SELLER

Clauses 1(41), 13, 14, 15.1 and 35

Name: **Refer Addendum A (Item A1)** DOB: .....  
Address: **C/- MCINNES WILSON LAWYERS GPO BOX 1089 BRISBANE QLD 4001**  
ABN / ~~ACN~~ ..... Phone: ..... Mobile: .....  
Email: .....  
Solicitor / Self Acting **MCINNES WILSON LAWYERS**  
Address: **GPO BOX 1089 BRISBANE QLD 4001**  
Phone: **( 07 ) 3231 0600** Mobile: .....  
Email: **ahetherington@mcw.com.au** Contact: **ANDREA HETHERINGTON**

### 4. BUYER'S AGENT (If Applicable)

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

### 5. BUYER

Clauses 1(9), 13, 14, 15.4, 15.5, 15.6, 29 and 31

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

### 6. LAND

Clauses 1(36), 24, 25, 26, 27 and 28

Address: **53 ESPLANADE**  
**GOLDEN BEACH, QLD, 4551**  
Lot No. **22** on Plan **RP61958** Title Reference: **12357233** Area: **607** (Approx.)  
Freehold ☒ Leasehold ☐ (Complete as applicable. If neither checked, it is assumed to be Freehold)  
Local Government: **SUNSHINE COAST COUNCIL**

**7. PURCHASE PRICE** Unless expressly provided any GST payable is included in the purchase price. Clauses 1(37) and 6

Purchase Price \$

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

**8. DEPOSIT** Clause 3

Initial Deposit: **5% OF THE PURCHASE PRICE** Payable: **5PM 2 BUSINESS DAYS FROM THE CONTRACT DATE**

Balance Deposit: Payable by a date no later than:

**9. DEPOSIT HOLDER** Clauses 3.1 and 3.7

**MICHAEL KETTLE REALTY P/L TRUST ACCOUNT**

**10. FINANCE** Complete all details for Clause 5 to apply. Clauses 5, 20(2) and 34.2

Finance Amount: **NOT APPLICABLE** Finance Date: **NOT APPLICABLE**

Lender: **NOT APPLICABLE**

**11. BUILDING / PEST / POOL SAFETY INSPECTIONS** Only completed details will apply. Clauses 4, 20(1) and 34

*Note: This Item is not applicable where the Property is sold by Auction*

(a) Building Inspection: **Yes / No**

(b) Pest Inspection: **Yes / No**

(c) Pool Safety Inspection: **Yes / No** (Applicable only if Item 15.2(c) is ticked)

Inspection Date: **NOT APPLICABLE** (Date to be completed by)

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

Acknowledged Defects/Exclusions:

**12. SETTLEMENT** Clauses 1(13), 1(36), 1(43), 12, 13 and 34

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

OR **AS PER SPECIAL CONDITION 1. SECTION (d)**

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

☐ (a) e-conveyance (Clause 12.1) and;  
the Electronic Workspace will be opened by the Seller unless otherwise agreed.

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

**13. ELECTRICITY SAFETY SWITCH** Clause 1(2)

An Approved Safety Switch ☒ is ☐ is not installed for general purpose socket outlets.

**14. SMOKE ALARMS** Clauses 12.3(4) and 15.1(10)

Smoke alarms installed on the Property: ☒ Yes ☐ No

**15. POOL SAFETY CERTIFICATE** Clauses 1(34), 1(38), 1(39), 12.3(8) and 15.1(11)

15.1 A Regulated Pool forms part of the Property being sold or is on adjacent Regulated Land: ☐ Yes ☒ No

(if 'yes' complete Item 15.2 below)

15.2 For the Regulated Pool, at the Date of Contract, there is: (one box must be ticked)

☐ (a) a current Pool Safety Certificate Certificate No.: Expiry: / /

☐ (b) a current Form 17 - Final Inspection Certificate (issued for newly constructed or altered pools only)

☐ (c) no current Pool Safety Certificate - Form 36 - Notice of no pool safety certificate provided by the Seller (see Clause 4.3(1)) (where Item 15.2(c) is ticked the Buyer must indicate an intention with respect to a Pool Safety Inspection in Item 11(c))

**16. EXCLUDED IMPROVEMENTS** Note: unless excluded, all Improvements are included Clauses 1(25), 11.3 and 15.1(9)

**17. INCLUDED CHATTELS**

Clauses 1(25), 1(36) and 15.1(2)

(eg. Dishwashers, microwaves)

**18. RESIDENTIAL TENANCIES**

Clauses 8.1, 12.3(3), 15.1(7), 15.1(8) and 18

18.1 Term: \_\_\_\_\_ Options: \_\_\_\_\_

Rent: \_\_\_\_\_ Bond: **\$0.00** Tenant/s: \_\_\_\_\_

Commencement Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Completion Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

18.2 Managing Agent: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**19. PRESENT USE**

Clause 28

☒ Residential ☐ Rural ☐ Vacant Land ☐ Rural Residential ☐ Other: \_\_\_\_\_**20. WORK ORDERS / NOTICES / APPLICATIONS**

Clauses 1(28), 1(47), 15.1(6), 15.4, 23 and 35

(a) 1. Local Government/Statutory Authorities: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

2. \_\_\_\_\_ : \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

3. \_\_\_\_\_ : \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

(b) Copies of Applications or Orders given to the Buyer in accordance with Section 83 of the NDRA prior to the Date of Contract:

1. \_\_\_\_\_ : \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

2. \_\_\_\_\_ : \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

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

Clauses 1(20) and 18

Title: 'Any Encumbrance other than a mortgage as shown on the Current Title Search attached and marked 'ANNEXURE A' (eg. Easement)

Other: 'A council sewerage pipe traverses the Property as shown on the plan attached and marked 'ANNEXURE B'

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

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

**22. INTEREST ON UNPAID MONIES**

Clauses 14.3(3) and 21

(a) Rate: \_\_\_\_\_ (If left blank, Item 22(b) is applicable)

(b) Queensland Law Society Inc Standard Contract Default Interest Rate

**23. GST WITHHOLDING**

Clause 7

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

☒ Existing Residential Premises ☐ New Residential Premises ☐ Potential Residential Land

23.2 (The Buyer is to complete this Item 23.2 where the purchase is of Potential Residential Land)

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

☐ Yes ☒ No

Note: where the answer is 'yes' and the acquisition is for Potential Residential Land Item 23.3(2) is not required to be completed.

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

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

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

(a) Seller's Name: \_\_\_\_\_ ABN: \_\_\_\_\_

(b) Payment amount: **\$0.00**

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

(d) Where the Purchase Price is not expressed as an amount of money insert the GST inclusive market value of the Property: **\$0****Important Note to Buyer:** Failure by the Seller to complete this Item does not affect the Buyer's obligation to make a payment under section 14-250 (Clause 7).

## 24. SPECIAL CONDITIONS

Clause 32

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

Refer Addendum A (Item A2)

## 25. SIGNING

### Buyer's Acknowledgement

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

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

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

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

*Note: Cooling-off Period does NOT apply to a Contract for sale of house and land by auction.*

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

Buyer(s) Signature(s)

(\*) Witness(es) Signature(s)

Date Signed

|         |       |                 |
|---------|-------|-----------------|
| 1. .... | ..... | ..... / .. / .. |
| 2. .... | ..... | ..... / .. / .. |
| 3. .... | ..... | ..... / .. / .. |
| 4. .... | ..... | ..... / .. / .. |

Seller(s) Signature(s)

(\*) Witness(es) Signature(s)

Date Signed

|         |       |                 |
|---------|-------|-----------------|
| 1. .... | ..... | ..... / .. / .. |
| 2. .... | ..... | ..... / .. / .. |
| 3. .... | ..... | ..... / .. / .. |
| 4. .... | ..... | ..... / .. / .. |

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

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

### IMPORTANT NOTE:

All Parties should sign annexures, initial any alterations to the Contract and, except where the Contract is signed electronically, initial at the bottom of each page of the Contract (Failure to do so does not invalidate this Contract)

Copies to be provided to all parties

## Terms and Conditions

### 1. Definitions

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

- (1) **Adjustment Date:** The earlier of:
  - (a) the date possession being given to the Buyer; or
  - (b) the Settlement Date.
- (2) **Approved Safety Switch:** defined as a residual current device under Schedule 9 of the *Electrical Safety Regulation 2013*.  
Note: Where an Approved Safety Switch is not installed, advice should be obtained from a licensed electrician to ensure compliance with the *Electrical Safety Regulation 2013*.
- (3) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for adjustments as provided in this Contract.
- (4) **Bank:** A business carrying on a bank business as defined in section 5 of the *Banking Act 1959 (CTH)*, the Reserve Bank or Bank constituted under State law.
- (5) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (6) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (7) **Bond:** Any Bond paid in accordance with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (8) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland and excluding the period from 27th December to 31st December inclusive (unless otherwise agreed between the parties).
- (9) **Buyer:** The Buyer named in Item 5, including any additional Buyers listed in an attached annexure.
- (10) **Contract:** means this Contract including Item Schedule, Terms and Conditions, Special Conditions and attached annexures or documents referred to in the Item Schedule.
- (11) **Data Collection Agency:** means an agency or organisation that collects real estate data to provide information to the real estate, finance and property valuation industries to enable data analysis.
- (12) **Date of Contract:** The date as set out in Item 1 or the date of the last party signing, whichever is the later.
- (13) **e-conveyance:** means a conveyancing transaction to be completed using e-conveyancing.
- (14) **e-conveyancing:** means a system of land conveyancing that uses an ELN to lodge documents electronically for the purposes of the land titles legislation.
- (15) **ECNL:** means *Electronic Conveyancing National Law (Queensland)*.
- (16) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Queensland) Act 2001* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (17) **Electronic Workspace (Workspace):** for an e-conveyance, means a shared electronic Workspace within an ELN that allows the participating subscribers to the e-conveyance:
  - (a) to lodge a document electronically under the ECNL; and
  - (b) if relevant, to authorise or complete Financial Settlement of the e-conveyance.

Once opened such Electronic Workspace will be an electronic address designated by the parties in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- (18) **Electronically Signed:** means an electronically generated signature and includes a digital signature as defined in the ECNL.
- (19) **ELN:** means an Electronic Lodgment Network under the ECNL.
- (20) **Encumbrance:** means matters affecting title to the Property, both registered and un-registered, including statutory easements, rights referred to in the Certificate of Title and personal property security interests as defined in section 12 of the *Personal Property Securities Act 2009 (CTH)*.
- (21) **Financial Settlement:** of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.
- (22) **Financial Settlement Schedule:** means a schedule within the electronic workspace listing financial settlement details for source and destination accounts necessary to complete Financial Settlement.
- (23) **GST:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (24) **GST Act:** refers to the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)*.
- (25) **Improvements:** All fixed or permanent structures on the land and any items fixed to them, including domestic dwelling, sheds, car accommodation, pergolas, in-ground or fixed pools (regulated or otherwise), fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, fixed clothes lines and all in-ground plants, unless excluded in Item 16.
- (26) **Item:** means items detailed in the Item Schedule of this Contract.
- (27) **Land Tax Clearance Certificate:** A certificate issued by the Office of State Revenue that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (section 60(5)(a), (b) of the *Land Tax Act 2010*)
- (28) **NDRA:** means the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.
- (29) **New Pool Safety Standard:** means the compliance standard applicable under the *Building Act 1975* to a Regulated Pool from the earlier of the 30th November 2015 or the date a property is sold or leased.
- (30) **Nonconformity Notice:** means the Pool Safety Nonconformity Notice (Form 26) issued where the Pool Safety Inspector is not satisfied the pool complies with the New Pool Safety Standard.
- (31) **Outgoings:** All government and local government rates and charges assessed on the Land including water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date.
- (32) **Participation Rules:** means the rules determined under section 23 of the ECNL.
- (33) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (34) **Pool Safety Certificate:** means the certificate issued under the *Building Act 1975* with respect to a complying Regulated Pool.

- (35) **Pool Safety Standard:** means the compliance standard applicable to the Regulated Pool at the time the pool was constructed.
- (36) **Property:** The Land described in Item 6 together with Improvements described in Clause 1(25) and the included chattels described in Item 17.
- (37) **Purchase Price:** The sum referred to in Item 7.
- (38) **Regulated Land:** means regulated land as defined under section 231A of the *Building Act 1975*.
- (39) **Regulated Pool:** Where used in this Contract has the same meaning as given to it by section 231B of the *Building Act 1975*.  
Note: a Regulated Pool is a swimming pool as defined under the *Building Act 1975* which will include a spa pool.
- (40) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (41) **Seller:** The Seller named in Item 3, including any additional Sellers listed in an attached annexure.
- (42) **Settlement:** The conveyance of the Property from the Seller to the Buyer.
- (43) **Settlement Date:** The appointed date specified in Item 12 for Settlement to occur.
- (44) **Settlement Time:** of an e-conveyance, means the time of locking of the Workspace but not later than 4.00pm AEST on the Settlement Date.
- (45) **Tenancy Documents:** Tenancy Agreements, residential or otherwise, and documents ancillary thereto.
- (46) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.
- (47) **Work Order:** a valid notice or order issued by a court, tribunal or other competent authority or notice served or issued in compliance with an Act or Regulation that requires work to be done, or monies spent, on or in relation to the Property.

## 2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa;
- (2) 'person' includes a firm, a body corporate together with executors, administrators, successors and assigns;
- (3) an agreement, representation or warranty:
  - (a) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (b) on the part of two or more persons binds them jointly and severally;
- (4) a reference to:
  - (a) an item number is a reference to an item in the Item Schedule;
  - (b) a person includes the person's executors, administrators, successors and assigns;
  - (c) a document includes any variation to that document; and
  - (d) any law includes all regulations and other instruments under it and amendments or replacements of any of them; and
- (5) the Item Schedule and any attached addendum pages and annexures shall form part of this Contract.

## 3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in Item 8.
- 3.2 Time is of the essence when making payment of the Deposit.

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

## 4. Property Inspections

- 4.1 The Contract is subject to and conditional upon the Buyer obtaining, at their own expense, by the Inspection Date (or such extended date as may be agreed) the relevant inspection report/s:
  - (1) as specified in Item 11(a) and (b) (excluding Acknowledged Defects/Exclusions) satisfactory to the Buyer; and
  - (2) where Item 11(c) applies, a report, satisfactory to the Buyer, that the Regulated Pool:
    - (a) complies with the New Pool Safety Standard (Pool Safety Certificate Issued); or
    - (b) does not comply with the New Pool Safety Standard (Nonconformity Notice given).
- 4.2 In compliance with this clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the inspection report/s in compliance with Clause 4.1.



- 4.3 (1) Where there is no Pool Safety Certificate and the Buyer has indicated an intention to obtain a Pool Safety Inspection in Item 11(c), the Seller authorises the Buyer to appoint a licensed Pool Safety Inspector for the purposes of carrying out the inspection and to receive the results of such inspection.
- (2) The Buyer will be deemed satisfied with the Pool Safety Inspection where a Pool Safety Certificate issues on or before the Inspection Date.
- Note to Buyer:** *Building Act 1975* - If no Pool Safety Certificate is received and the Contract proceeds to Settlement, it shall be the Buyer's responsibility to, at its own cost, obtain such certificate within 90 days (the usual period) or such further period after Settlement where section 246ATJ(2)(b) of the *Building Act 1975* applies. The Buyer is referred to section 4 of the Form 36.
- Note to Seller:** Where a Pool Safety Inspection has been carried out resulting in a Nonconformity Notice issuing and the Contract does not proceed to Settlement, the local authority may require the pool owner, at its cost, to carry out works to comply with the relevant Pool Safety Standard.
- 4.4 Upon receipt of any inspection report the Buyer must promptly but no later than 5pm on the Inspection Date, give notice to the Seller:
- (1) that the Buyer is satisfied with the inspection report/s; or
- (2) that the Buyer is not satisfied with the inspection report/s and terminates the Contract.
- 4.5 The Buyer must at all times act reasonably.
- 4.6 Should the Buyer not give notice to the Seller in accordance with Clause 4.4 by 5.00 p.m. on the Inspection Date the Seller may, by notice, terminate this Contract.
- 4.7 In respect to Clause 4.4(2) and 4.6, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.4 or give notice in accordance with Clause 4.4(1), where upon this Contract will be in full force and effect.
- However, with respect to Item 11(c) Pool Inspection, a party may not terminate after receiving a Pool Safety Certificate.
- 4.8 Where the Buyer has given notice of termination in accordance with Clause 4.4(2) but has failed, when requested by the Seller, to provide a copy of the relevant inspection report/s (or in the case of a Regulated Pool any Nonconformity Notice issued as a result of the Pool Safety Inspection), the termination will not take effect until such copy has been provided to the Seller.
- 4.9 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.6 will apply.
- 4.10 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.
- 4.11 Inspectors who conduct building and/or pest inspections for the purposes of this Contract must be licensed as an Inspector holding a complete residential building inspection licence in accordance with the *Queensland Building and Construction Commission Act 1991* and Regulation there to.
- 4.12 Inspectors who conduct Pool Safety Inspections for the purposes of this Contract must be licensed as Pool Safety Inspectors by the Pool Safety Council.
- 4.13 Clause 4 does not apply where the Property is sold by auction.
- 5. Finance**
- This clause shall not apply unless all details in Item 10 are completed.
- 5.1 This Contract is subject to and conditional upon the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed). See Item 10.
- 5.2 In complying with this clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 38 and in any case, not later than the Finance Date.
- 5.4 If the Buyer, after complying with Clause 5.2, has not obtained the Finance approval by the Finance Date then the Buyer may by giving notice to that effect to the Seller:
- (1) terminate this Contract; or
- (2) prior to the Seller terminating the Contract, waive the benefit of this condition.
- 5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4(1) or (2) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 or written proof of rejection of the Buyer's application for finance.
- 5.7 This Contract is not terminated until notice is given in accordance with either Clause 5.4 or 5.5.
- 5.8 Should the Buyer not obtain Finance Approval by the Finance Date and not give notice in accordance with Clause 5.4, and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount and this Contract will be in full force and effect.
- 5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this clause.
- 6. GST**
- 6.1 Unless expressly provided in the Contract the Purchase Price includes any GST liability in respect of the sale of the Property.
- 6.2 Any GST incurred by the Seller in respect of a taxable supply under this Contract must be paid or reimbursed by the Buyer on provision of a tax invoice.
- 7. GST Withholding**
- 7.1 Where the Property the subject of this Contract is, within the meaning of the GST Act a 'new residential premises' or 'potential residential land' the Seller must give to the Buyer a GST Withholding Notice (Item 23.3) in accordance with section 14-255 of the *Taxation Administration Act 1953 (Cth)*.
- 7.2 (1) Where an amount is required to be paid to the Australian Taxation Office (ATO) in accordance with the GST Withholding Notice (Item 23.3) the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO the amount as required in Item 23.3(2) in accordance with section 14-250 of the *Taxation Administration Act 1953 (Cth)*.
- (2) Notwithstanding the provisions of Clause 7.2(1) the Buyer will if requested by the Seller provide to the Seller at settlement a bank cheque for the GST Withholding amount payable to the Commissioner of Taxation.
- (3) Where the Buyer has provided a bank cheque to the Seller in accordance with Clause 7.2(2) the Seller must forthwith forward such bank cheque to the ATO.
- 7.3 Where the GST Withholding Notice (Item 23.3) is not completed by the Seller, the Buyer is authorised to withhold from the Balance Purchase Price and remit to the ATO, in compliance with the GST Act, an amount calculated in accordance with section 14-250(6) of the *Taxation Administration Act 1953 (Cth)*.

- 7.4 Where the Buyer is required to make a payment in accordance with section 14-250 (*Taxation Administration Act 1953 (Cth)*) the Buyer must lodge with the ATO the following forms:
- (1) not less than 14 days prior to Settlement, a GST Property Settlement Withholding Notification (Form 1); and
  - (2) at or before Settlement, a GST Property Settlement Date Confirmation (Form 2).
- 7.5 On or before Settlement the Buyer must provide to the Seller a copy of:
- (1) the confirmation email received from the ATO following lodgement of the Form 1 showing the lodgement and payment reference numbers;
  - (2) the Form 2 lodged with the ATO; and
  - (3) a completed ATO payment slip.
- 8. Adjustments**
- 8.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 8.2 All Outgoings under Clause 8.1 must be apportioned as at the Adjustment Date.
- 8.3 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date must be apportioned between the parties as at the Adjustment Date.
- 8.4 Apportionment of Outgoings with respect to those which have been paid will be adjusted on the amount paid and for those assessed but not paid on the non discounted assessment.
- 8.5 All Outgoings paid and Rents and Income received (including post Settlement reassessments) by either party must be apportioned based on the Adjustment Date and paid or received at Settlement or as otherwise appropriate. This excludes water rates charges based on usage.
- 8.6 Unpaid Rent, as at Settlement, will not be adjusted until paid.
- 8.7 Land tax will be apportioned as if the Land were the Seller's only land in Queensland and the Seller is a natural person resident in Queensland.
- 8.8 (1) Should the Office of State Revenue not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum from the settlement monies, as the Office of State Revenue specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date.  
Upon a Land Tax Clearance Certificate issuing, the Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.  
This obligation is a continuing obligation and does not lapse at Settlement.
- (2) Where the Land described in Item 6 forms part of a larger lot and no separate assessment of Land Tax is issued in respect to the Land, Land Tax will be adjusted, using the site or unimproved value of the lot, based on the proportion the area of the Land bears to the area of the whole of the lot. Site value and unimproved value have the meaning given them in section 7 of the *Land Valuation Act 2010*.
- 8.9 (1) Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or where no such information is available, on the latest assessment.
- (2) Outgoings on a "per lot" basis shall be adjusted by dividing the total assessment by the number of lots included in the assessment.
- 8.10 Any amount, other than Land Tax, adjustable under this provision which relates to land other than that included in the Property shall be (where no specific assessment is issued) adjusted proportionately based on the area of the whole of the land relative to the area of the Land included in the Property.
- 8.11 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this clause, the discount shall not be taken into account, unless already received.
- 8.12 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:  
Adjustment = TC/RD x AD  
Where:  
TC = Total Usage Charge as at the Adjustment Reading Date  
RD = Days between the previous reading and Adjustment Reading Date  
AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date.  
(ie. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water meter was read for the purpose of issue of Local Government water usage assessment)
- 8.13 The Buyer is responsible for:
- (1) obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 8.12;
  - (2) determining an Adjustment amount to be paid in accordance with Clause 8.12; and
  - (3) disclosing the information in Clause 8.13(1) and (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 8.14 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority forthwith. This will be an adjustment for the purposes of Clause 8.1.
- 8.15 It shall be the Buyer's responsibility to obtain at its own cost all details of Outgoings from relevant government and local government authorities.
- 8.16 Where information regarding Outgoings, Rents and income details are not otherwise available, the Seller will, upon request, provide details from records in the Seller's possession.
- 9. Preparation and Completion of Documents**
- 9.1 The Buyer will have delivered to the Seller, at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Land and any assignment or other document reasonably necessary for Settlement of this Contract.
- 9.2 Upon compliance by the Buyer with the provisions of this Contract and where the Seller is legally represented (payment by the Buyer of the Seller's reasonable legal expenses), the Seller will upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of assessment and payment of transfer duty.
- 9.3 It is agreed to by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 9.2 if the Seller is not represented by a solicitor.



## 10. Release of Security Interest

10.1 Should any of the assets, being personal property, be subject to a security interest to which the *Personal Property Securities Act 2009 (Cth)* applies:

- (1) such assets will be transferred free of the security interest;
- (2) where required to perfect the release of the security interest the Seller will ensure that prior to Settlement the Buyer receives from the secured party a written undertaking to register a financing change statement with respect to the personal property the subject of the security interest; and
- (3) words and phrases which are defined in the *Personal Property Securities Act 2009 (Cth)* have the same meaning in Clause 10 unless the context requires otherwise.

## 11. Handover

- 11.1 (1) The Seller must maintain the Property in the condition as at the Date of Contract and must hand over the Property at Settlement without damage or loss to the condition as at the Date of Contract (fair wear and tear excepted).
- (2) The Seller will not be liable for loss or damage to the Property unless caused by the Seller's neglect or fault. Should there be damage or loss to the condition of the Property the Buyer may not delay Settlement or withhold monies.
- 11.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.
- 11.3 Property not removed in accordance with Clause 11.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.
- 11.4 Where the Seller has not satisfied its obligations under Clauses 11.1 or 11.2 the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification prior to Settlement.
- 11.5 The Buyer may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to maintain the Property in relation to Clauses 11.1 and 11.2 and costs incurred in dealing with property not removed in accordance with Clause 11.3 as liquidated damages notwithstanding Settlement may have taken place.
- 11.6 With respect to Clauses 11.1 and 11.2, the Buyer must notify the Seller prior to Settlement, of its intention to make a claim. A notice provided in accordance with Clause 11.4 and not complied with will satisfy this obligation.
- 11.7 Where a dwelling house which forms part of the Property the subject of this Contract is before the date of possession or completion, whichever earlier occurs, so destroyed or damaged as to be unfit for occupation as a dwelling house, the Buyer may, at the Buyer's option, rescind the Contract by notice in writing given to the Seller or the Seller's solicitor not later than the date of completion or possession whichever the earlier occurs.

## 12. Settlement

### 12.1 Settlement by Electronic Conveyancing (e-conveyance)

- (1) Where Item 12.2(a) specifies settlement by e-conveyance this Clause 12.1 will apply and Settlement including lodgment of Transfer Documents and payment of Balance Purchase Price, adjusted as provided in this Contract, will proceed electronically in accordance with the ECNL.
- (2) Where an inconsistency exists between this and other clauses in this Contract this Clause 12.1 will apply.

- (3) Where a party, acting reasonably, is not able to proceed with e-conveyance written notice, including advice regarding the reason for such inability must be given as soon as possible prior to Settlement Date and the provisions of Clause 12.1(10)(b)(ii) will apply with regard to Settlement.
- (4) Each party must:
  - (a) be, or engage a representative who is a Subscriber (as defined in the ECNL) for the purposes of the ECNL; and
  - (b) conduct this transaction in accordance with the ECNL and Participation Rules.
- (5) Once this Contract has become unconditional the party designated in Item 12.2(a) must promptly cause a Workspace to be opened and populated with all necessary information and documents to facilitate Settlement and advise all relevant parties, including relevant financial institutions, and invite them to join the Workspace.
- (6) Upon being invited to join the Workspace the remaining parties together with relevant financial institutions must promptly join the Workspace and cause the Workspace to be populated with all necessary information and documents, to facilitate Settlement.
- (7) A party will not be in default where it is prevented from complying with an obligation under this clause due to failure by the other party or a financial institution to comply with an obligation under this Clause 12.1.
- (8) The parties will confirm through the Workspace a Settlement Time. Neither party may terminate this Contract while the Workspace is locked for Settlement.
- (9) Settlement occurs when the Workspace for the e-conveyance records that:
  - (a) Financial Settlement occurs; or
  - (b) if there is no Financial Settlement, the documents necessary to transfer title have been accepted for electronic lodgment by the Titles Registry Office.
- (10) Each party must do everything reasonably necessary and in a reasonable timeframe to ensure:
  - (a) Settlement (including Financial Settlement) occurs electronically on the Settlement Date; or
  - (b) where the parties have complied with the provisions of Clauses 12.1 and 12.3(7) and Settlement cannot occur by e-conveyance and neither party is in default, Settlement including Financial Settlement will be completed:
    - (i) by e-conveyance on the next Business Day after the Settlement Date; or
    - (ii) if the parties agree, in accordance with Clause 12.2, in which case Settlement must be within 3 Business Days of the Settlement Date,and in either case, time remains of the essence.
- (11) Should deposit monies held by the agent be required for settlement purposes the agent is authorised and directed, if instructed by the Seller, to release the deposit monies less any agent's commission to the trust account of the Seller's Solicitor. The Seller's Solicitor is authorised to pay the monies as instructed by the Seller in accordance with the directions of the parties.
- (12) The parties agree payments of the GST Withholding amount as provided by Clause 7 will be complied with where at Settlement Time payment of the required amount is provided for and required in the Financial Settlement Schedule.
- (13) All monies required for e-conveyance Settlement must be cleared funds prior to Settlement Time.

- (14) Where monies have been paid to an incorrect account the parties must take all reasonable steps to recover such monies for payment to the intended recipient.
- (15) Each party will be responsible for their own costs in respect to e-conveyance.
- (16) Where an Outgoing or other financial obligation is to be discharged or paid at Settlement, if such payment cannot be facilitated through the e-conveyance the parties will make suitable arrangements to discharge or pay the Outgoing or other financial obligation by means other than through e-conveyance.

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

- (1) Where Item 12.2(b) specifies settlement by non e-conveyance or Clause 12.1(3) applies or the parties agree in accordance with Clause 12.1(10)(b)(ii), this Clause 12.2 will apply.
- (2) Settlement shall take place on the Settlement Date between 10.00am and 4.00pm AEST:
  - (a) at the settlement office of the Seller's mortgagee or solicitor; or
  - (b) as otherwise agreed upon by the parties; or
  - (c) failing agreement, at the nearest office to the nominated place for Settlement at which land title documents may be lodged for registration.
- (3) Notwithstanding the completion of Item 12.2(b) the parties may agree to e-conveyance at any time, at which point the provisions of Clause 12.1 will apply.
- (4) On the Settlement Date:
  - (a) the Buyer must, pay the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitors in writing); and
  - (b) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer) Transfer Documents free from Encumbrances, unless detailed in Item 21, executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (5) The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.

#### **12.3 Settlement - Other Provisions**

On Settlement in accordance with Clause 12.1(9) or 12.2(4) (whichever is applicable) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Land necessary to register the transfer of the Land to the Buyer as owner. Where the title applies to more than one lot the cost of any new title will be borne by the Buyer;
- (2) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing;
- (3) all Tenancy Documents, including all documents and forms required to comply with the provisions of the *Residential Tenancies and Rooming Accommodation Act 2008* including Bond transfers and notice to Tenants advising of the sale, provided however section 117 of the *Property Law Act 1974* does not apply insofar as it assigns to the Buyer the right to recover rent arrears;
- (4) a properly completed property transfer information form in accordance with the *Fire and Emergency Services Act 1990*;
- (5) Rent and Income unpaid for any period prior to the Settlement Date and not adjusted between the parties at Settlement is not assigned to the Buyer but remains a debt due to the Seller in which case the provisions relating to Rent of section 117 of the *Property Law Act 1974* are not applicable;

- (6) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto to which the Buyer may be reasonably entitled;
- (7) in compliance with Clause 18, all documentation necessary to effect release of any Encumbrance over the Property, except as detailed in Item 21, including where applicable, property subject to a security interest to which the *Personal Property Securities Act 2009 (CTH)* applies;
- (8) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular, but not exclusively, those relating to prior transfers, tenancies, licenses, warranties, relevant certificates relating to pool safety compliance, noncompliance or exemption, and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties; and
- (9) vacant possession of the Land (except if tenanted) and title to all the Property.

#### **13. Buyer's Default**

- 13.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Buyer specifying the default, terminate or affirm this Contract.
- 13.2 Should the Seller terminate this Contract in accordance with Clause 13.1 the Seller may, without prejudice to any other rights:
  - (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4;
  - (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages;
  - (3) retain the Property and sue the Buyer for damages for breach of this Contract;
  - (4) claim any Deposit monies that are in arrears as a liquidated debt; and
  - (5) appropriate the profit, if any, on resale.
- 13.3 Should the Seller affirm this Contract in accordance with Clause 13.1 the Seller may, without prejudice to any other rights:
  - (1) sue the Buyer for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract; and
  - (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.
- 13.4 Damages will include:
  - (1) professional fees and costs incurred to satisfy the terms of this Contract; and
  - (2) legal costs on an indemnity basis.

#### **14. Seller's Default**

- 14.1 If the Seller is in default under this Contract then, providing the Buyer is not in default, the Buyer may, in addition to and without limiting other remedies, including action for damages and/or specific performance, by notice in writing to the Seller specifying the default, terminate or affirm this Contract.
- 14.2 Should the Buyer affirm this Contract the Buyer may, without prejudice to any other rights, sue the Seller for specific performance of the Contract and/or damages for breach as well as, or in lieu of, specific performance of the Contract.
- 14.3 Should the Buyer terminate this Contract in accordance with Clause 14.1 the Buyer may, without prejudice to any other rights:
  - (1) recover from the Seller/Stakeholder the Deposit and any other monies paid by the Buyer under the Contract;

- (2) be entitled to any interest earned on a Deposit invested in accordance with Clause 3.7;
- (3) in addition be entitled to claim interest on any monies paid by the Buyer under the Contract (other than the Deposit) at the rate prescribed in Item 22 to be calculated from and including the date of payment by the Buyer up to, but excluding the date on which the money is repaid; and
- (4) sue the Seller for damages.

**14.4 Damages will include:**

- (1) professional fees and costs incurred to satisfy the terms of this Contract; and
- (2) legal costs on an indemnity basis.

**15. Seller's Warranties**

**15.1** The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:

- (1) the Seller will be the Registered Owner in the case of freehold land or the Lessee in the case of leasehold land;
- (2) it is the owner of all the Property;
- (3) there is no impediment to the Seller completing the sale;
- (4) the Seller is not insolvent or bankrupt;
- (5) and except as provided in Clause 15.3, the Seller has no knowledge of any legal actions affecting or which may affect the Property or any part of it;
- (6) except as disclosed in Item 20(a) and 20(b), the Seller has no knowledge of any outstanding or unsatisfied judgments, Work Orders, demands or writs with respect to any Act, Regulation or By-Law:
  - (a) required to be complied with by the Seller, which have not been fully complied with; or
  - (b) which may adversely affect the Property or the Seller's ability to complete this Contract; or
  - (c) which may bind the Buyer;
- (7) the Seller has complied with the requirements of the *Residential Tenancies and Rooming Accommodation Act 2008* with respect to the Tenancies as set out in Item 18;
- (8) the details set out in Item 18.2 are correct and the Seller has caused notice of sale of the Property to be given to the Managing Agent mentioned in Item 18.2;
- (9) any Improvements to the Property not excluded in Item 16 will not have been removed by the Seller;
- (10) the Seller has complied with Division 5A of the *Fire and Emergency Services Act 1990* with respect to smoke alarms;

Note: From the 1st July 2007 owners of all houses and units (domestic dwellings) in Queensland must install and maintain smoke alarms in compliance with the *Fire and Emergency Services Act 1990* as amended.

- (11) where there is a current Pool Safety Certificate, no alterations or additions have been made to the Regulated Pool/s or its surrounds prior to Settlement which would affect the Pool Safety Certificate;
- (12) in the case of vacant land, the Property has been provided with a separate sewerage connection, unless otherwise disclosed in Item 24 (Special Conditions). This clause shall not apply to Property where other disposal systems are required and permissible by the local authority or council; and
- (13) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to any notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register.

15.2 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Work Order as contemplated by Clause 15.1(6).

15.3 The Seller warrants as at the Date of Contract, unless disclosed prior to entering into this Contract in accordance with Section 83 of the NDRA (refer to Item 20(b)), the Land is not subject to or affected by an Application or Order under Chapter 3 of the NDRA.

15.4 If a warranty set out in Clause 15.1(1) to (7) (*excluding matters disclosed in Item 20 or Item 24*) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller, terminate this Contract.

15.5 If a warranty set out in Clause 15.1(8) to (13) is incorrect or is breached by the Seller, the Buyer may by notice to the Seller given within 14 days after the Buyer's copy of the Contract is received by the Buyer:

- (1) forthwith terminate this Contract; or
- (2) elect to complete this Contract and reserve its rights to claim compensation.

15.6 If the warranty set out in Clause 15.3 is incorrect or is breached by the Seller, the Buyer may terminate the Contract at any time before the Contract settles by giving a signed, dated notice of termination to the Seller or the Seller's Agent stating that the Contract is terminated under section 86 of the NDRA.

15.7 Any notice given to the Seller under Clauses 15.4 and 15.5 must set out clearly, details of the incorrect or breached warranty.

**16. Foreign Investment Approval**

The Buyer warrants either:

- (1) the purchase is not a notifiable action with respect to the *Foreign Acquisitions and Takeovers Act 1975 (CTH)* (FATA); or
- (2) where the purchase is a notifiable action under the FATA the Buyer has obtained any and all approvals.

**17. Consent**

17.1 If the Seller must obtain consent to transfer the Property, as is the case with Leasehold Property, the Seller shall at his own cost promptly take every reasonable action to obtain such consent.

17.2 The Buyer will, if required, do all things as may reasonably be necessary to assist in obtaining such consent.

17.3 If consent is not obtained by the Settlement Date, providing neither party is in default, either party may by written notice to the other party terminate this Contract.

**18. Encumbrance**

The Property is sold free of Encumbrances and Tenancies except as notified in Items 18 and 21 (But subject to all reservations in favour of the Crown).

**19. Further Acts**

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

**20. Inspection (Pre Settlement)**

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

- (1) Inspections in accordance with Clause 4;
- (2) valuation, if required (under Clause 5 or otherwise);
- (3) reading of the water meter;
- (4) one pre-settlement Inspection in addition to Clauses 20(1) and 20(2); and
- (5) survey in accordance with Clause 24.

## 21. Interest on Unpaid Monies

Any monies payable under this Contract (or any Judgment given in respect of this Contract) not paid when due will attract Interest from the due date, to the date of payment, at the rate prescribed in Item 22 and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

## 22. Possession Prior to Settlement

- 22.1 Should possession be given before the Settlement Date set out in Item 12 it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.
- 22.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a licence only.
- 22.3 The Buyer accepts the Property in the condition it is in at the date of possession.
- 22.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.
- 22.5 The Buyer must not part with possession of the Property.
- 22.6 Occupation of the Property shall be at the Buyer's risk.
- 22.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.
- 22.8 The Buyer will insure the Property for risks as specified by the Seller (including property for full replacement value and public liability), in a sum and on terms approved by the Seller, in both the Buyer's and Seller's names.

## 23. Planning/Building Notices

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

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

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

## 24. Property Survey

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

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

Should the Contract be terminated in accordance with Clause 24(1), all monies by way of Deposit shall be refunded to the Buyer.

## 25. Property Description

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

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

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

## 26. Compensation

Where the Buyer elects to complete under Clause 24(1) or 25(1) or must complete under Clause 24(2) or 25(2):

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

## 27. Property Information

- 27.1 The Seller must, if requested by the Buyer, at a reasonable time prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those referred to in Clauses 12.3(3) and 12.3(8).
- 27.2 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities relating to the Land, Improvements and chattels if any included in this sale.

## 28. Property Use

- 28.1 As far as the Seller is aware, the Present Use of the Property is legal but the Seller gives no warranty in respect thereof. See Item 19.

- 28.2 If at the Date of Contract:

- (1) under the Local Authority planning provisions the Present Use is unlawful; or
- (2) access and utilities to the Land or utilities on the Land servicing adjoining land are not legally secured; or
- (3) compliance with or application of any Government or local Government requirements or proposals, statutory or otherwise (including Transport Infrastructure and notice of intention to resume), with respect to the Land or adjoining land will materially adversely affect the Property; or
- (4) the Land and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST; or
- (5) the Land or part of it is declared as acquisition land under the *Queensland Reconstruction Authority Act 2011*,

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

## 29. Requisitions

The Buyer is not entitled to deliver requisitions on title.

## 30. Rights After Settlement

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

## 31. Risk

From 5.00pm on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however as long as the Seller remains in possession of the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (As provided in Clause 11).

## 32. Special Conditions

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

### 33. Stamp Duty

Payment of Stamp Duty on this Contract is the responsibility of the Buyer.

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

### 34. Time

34.1 Time shall be of the essence. Settlement must take place:

- (1) in the case of e-conveyance, at any time on the Settlement Date in accordance with Clause 12.1(8); or
- (2) otherwise at any time between the hours specified in Clause 12.2(2) of this Contract.

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

### 35. Work Orders

35.1 (1) The Seller must, by Settlement, comply with any Work Orders affecting the Property:

- (a) issued on or before the Date of Contract; or
- (b) requiring compliance by Settlement.

(2) Provided however, where, at the date of this Contract, the Land is subject to an Order under Chapter 3 of the NDRA and notice has been given in accordance with Section 83 of the NDRA, the provisions of Clause 35.1(1)(a) will not apply.

35.2 The Seller will promptly provide the Buyer with copies of all Work Orders received after the Date of Contract.

35.3 Should the Buyer direct the Seller not to expend monies or carry out the works required by such Work Orders, the Buyer will indemnify the Seller against any claims in respect thereof.

35.4 Subject to the Seller having complied with section 83 of the NDRA, the Buyer must comply with any Work Orders affecting the Property issued subsequent to the Date of Contract that require compliance after Settlement.

35.5 Costs incurred by one party in complying with any Work Order which, under Clause 35.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.

35.6 No contribution will be payable by the Seller with respect to construction or repair of any dividing fences between the Land and any adjoining land unless under the NDRA a Notice to Contribute with respect to a dividing fence has been served on the Seller prior to the date of this Contract in which case compliance with such notice shall be the responsibility of the Seller.

35.7 Where the Seller has not by Settlement complied with Clause 35.1(1) or 35.6 and no adjustment has been made to the Purchase Price to compensate for such noncompliance, the Buyer may recover as a debt from the Seller, the costs incurred by the Buyer in effecting such compliance.

35.8 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item 20.

35.9 Where, at the date of this Contract, the Land is subject to an Application or Order under Chapter 3 of the NDRA and notice has been given in accordance with Section 83 of the NDRA, the Buyer acknowledges, on entering into this Contract:

- (1) the Buyer will be joined as a party to proceedings relating to the Application; and
- (2) on Settlement, will be bound by the Order to the extent the Seller has not carried out the work required under the Order.

### 36. Seller's Agent

If an Agent has been appointed by the Seller as outlined in Item 2 to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.

### 37. Severability

Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Contract to be void, illegal or unenforceable by law, that term, provision or obligation must be read down to the extent possible or removed from the Contract whilst keeping the operation of the remainder of the Contract in effect.

### 38. Related Documents / Notices / Electronic Communication

38.1 The parties agree and confirm any documents and communications in relation to this Contract may be forwarded electronically and where this Contract has been forwarded electronically (either for signing or otherwise) the party receiving the Contract confirms having consented to the delivery of the Contract (and any other materials) by way of the electronic means of delivery before receiving the documentation.

38.2 A Related Document to be served on any party under this Contract shall be in writing and may be served on that party:

- (1) by delivering it to the party personally; or
- (2) by leaving it for the party at that party's address as stated in this Contract; or
- (3) by posting it to the party by ordinary mail or security mail as a letter addressed to the party at the address as stated in this Contract; or
- (4) by electronic communication to the party at the appropriate electronic address as stated in this Contract; or
- (5) by delivery to the other party's solicitor's office; or
- (6) by delivery of an Electronically Signed document to an Electronic Workspace opened in accordance with Clause 12.1; or
- (7) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 38.2(1) to (5) above.

38.3 A document posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the document would be delivered.

38.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.

38.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.

38.6 Documents must be served before 5pm on a Business Day, failing which, such document will be deemed to have been served on the next Business Day.

38.7 The parties acknowledge and agree an Electronic Document readily accessible via a link within a Related Document is received when the Related Document is served and will be opened when the Related Document is opened.

38.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.

38.9 Where a party signs this Contract electronically that party's signature is not required to be witnessed.

### 39. Applicable Law

39.1 The laws of Queensland are the laws applicable to this Contract.

39.2 A solicitor appointed by a party shall have full authority to act on behalf of such party with respect to all matters relating to this Contract.

### 40. Execution of Contract

40.1 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.

40.2 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a copy of that Contract) and transmitting a copy of it to the other or to the other party's Agent or Solicitor.

#### 41. Privacy

41.1 The Agent for either party to this Contract must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.

41.2 The Privacy Policy outlines how Agents collect and use Personal Information provided by you (all parties) as a party to this Contract, or obtained by other means, to provide the services required by you or on your behalf.

41.3 You as a party to this Contract agree Agents may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to third parties as may be required by the Agent for the purposes of facilitating electronic conveyancing, marketing, sales promotion and administration relating to the use of the Agent's products and services, but must do so in compliance with legislative and regulatory requirements.

41.4 Without provision of certain information your Agent may not be able to act effectively or at all on your behalf.

41.5 You as party to this Contract have the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

41.6 An Agent will provide (where applicable), on request, a copy of its Privacy Policy.

#### 42. Data Collection

Upon signing this Contract the parties agree the Agent for either party to this Contract, and the form completion service provider providing this form, may without disclosing Personal Information collect, use and disclose to Data Collection Agencies information contained in this Contract.

#### 43. Materially Adverse Event

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

43.2 The Relevant Party must:

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

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

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

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

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

43.5 For the purposes of this Clause 43:

- (1) *Essential Obligation* means any one of the obligations set out in Clauses 3.1, 4.1, 4.4, 4.6, 5, 9.1, 11.2, 12.1, 12.2, 12.3 and 24;
- (2) *Materially Adverse Event* or *MAE* means:
  - (a) an event as defined in section 16(1)(a) of the *Disaster Management Act 2003 (QLD)*; or
  - (b) an order or lawful direction of a Government authority, Federal, State or Local;
- (3) *Relevant Party* means a party to this contract prevented from carrying out an Essential Obligation as the direct result of a Materially Adverse Event for the Relevant Period; and
- (4) *Relevant Period* means the time during which a Relevant Party is unable to carry out an Essential Obligation as a consequence of a Materially Adverse Event.

#### 44. Withholding - Capital Gains

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

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

44.2 Where the Seller has, not less than 3 Business Days (or such shorter time as the parties may agree) prior to Settlement, provided a clearance certificate from the ATO in accordance with Schedule 1, valid at the time of Settlement, the Buyer's obligation under Clause 44.1 will not apply.

44.3 Payment made in accordance with Clause 44.1 will, for Settlement:

- (1) using e-conveyance, be treated as a financial obligation in respect of Clause 12.1(16); and
- (2) for non-e-conveyance treated as an adjustment (Clause 12.2(4)(a)).



# Addendum A

## A1. Seller - Name

LEONE SHIRLEY GARDINER, CHRISTOPHER CHARLES GARDINER  
AND CECILY JOAN BROADHURST AS EXECUTORS OF THE ESTATE  
OF SHIRLEY MAY GARDINER

## A2. Special Conditions

### 1. REGISTRATION OF TRANSMISSION APPLICATION

(a) This contract of sale is subject to and conditional upon registration of the change of title from Shirley May Gardiner (deceased) to Leone Shirley Gardiner, Christopher Charles Gardiner and Cecily Joan Broadhurst as Personal Representatives in the Department of Natural Resources, Mines and Energy within 90 days of the date of this contract or other such time as agreed by the parties in writing.

(b) If the change is not registered within this period of time, the Buyer is entitled to terminate this contract by giving notice in writing to the seller at the address of the Seller's lawyers. This shall be the Buyer's only remedy.

(c) In the event of termination in accordance with Special Condition 1(b), the deposit paid under the contract will be refunded in full to the Buyer.

(d) The Settlement Date will be the earlier of the following:

(i) 90 days from the Contract Date; or

(ii) 14 days after satisfaction of Special Condition 1(a), provided that the Settlement Date must not be earlier than 30 days after the Contract Date.

### 2. LIMITATION OF LIABILITY

(a) The Sellers named in this contract, enters into this contract only in their capacity as anticipated personal representative of the estate of Shirley May Gardiner (the Estate) and no other capacity (the Representative). Any liability arising under or in connection with this contract as against the Representative is limited to and can be enforced against the Representative only to the extent to which it can be satisfied out of property of the Estate.

(b) The Buyer may not sue the Representative personally or in any capacity other than as Representative of the Estate and may not seek the appointment of a receiver, a liquidator, an administrator or any similar person to the Representative or prove in any liquidation, administration or arrangement of or affecting the Representative or the Estate.

### 3. Electronic Transaction Act

The parties agree that:-

A) This Contract may be signed by each party by email or facsimile and that a signed and emailed or faxed copy of this Contract shall be binding on the parties.

B) The parties' agreement to execute this Contract by email or facsimile is given in accordance with the electronic Transactions (Queensland) Act 2001.

C) The parties agree that a notice under this contract will be effectively given if sent to the email address of the other party or its solicitor as described in the Reference Schedule.

D) Notices sent by email are taken to be received by the other party when they are received in the other part's inbox.

# CURRENT TITLE SEARCH

NATURAL RESOURCES, MINES AND ENERGY, QUEENSLAND

Request No: 34969430

Search Date: 16/09/2020 16:54

Title Reference: 12357233

Date Created: 05/09/1947

Previous Title: 12353021

## 'ANNEXURE A'

### REGISTERED OWNER

Dealing No: 714935920 14/02/2013

SHIRLEY MAY GARDINER

### ESTATE AND LAND

Estate in Fee Simple

LOT 22 REGISTERED PLAN 61958  
Local Government: SUNSHINE COAST

### EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 10641220 (POR 27)

ADMINISTRATIVE ADVICES - NIL

UNREGISTERED DEALINGS - NIL

\*\* End of Current Title Search \*\*

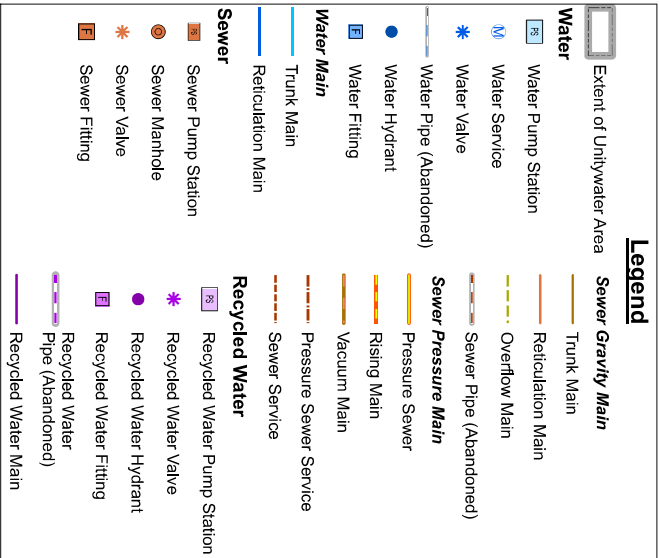
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