

## The Law Society of the Australian Capital Territory: Contract for Sale Schedule

<b>Land</b>	The unexpired term of the Lease	Unit <b>17</b>	UP No. <b>3909</b>	Block <b>1</b>	Section <b>67</b>	Division/District <b>GUNG AHLIN</b>
	and known as <b>204/48 Gungahlin Place, Gungahlin</b>					
<b>Seller</b>	Full name	<b>Irina Volodina and John Peter Borgatti</b>				
	ACN/ABN					
	Address	<b>365 Londonderry Road, Londonderry NSW 2753</b>				
<b>Seller Solicitor</b>	Firm	<b>Legal World</b>				
	Ref	<b>8042</b>				
	Phone	<b>(02) 8114 4546</b>		Fax		
	DX/Address	<b>Suite 12, 75-77 Pacific Hwy, Waitara NSW 2077</b>				
<b>Stakeholder</b>	Name	<b>Luton Properties Trust Account</b>				
<b>Seller Agent</b>	Firm	<b>Luton Properties Gungahlin</b>				
	Ref	<b>Matt Negline</b>				
	Phone	<b>(02) 6176 3420</b>		Fax		
	DX/Address	<b>1/33 Hibberson Street, Canberra ACT 2912</b>				
<b>Restriction on Transfer</b>	Mark as applicable	<input checked="" type="checkbox"/> Nil	<input type="checkbox"/> section 251	<input type="checkbox"/> section 265	<input type="checkbox"/> section 298	
<b>Land Rent</b>	Mark one	<input checked="" type="checkbox"/> Non-Land Rent Lease		<input type="checkbox"/> Land Rent Lease		
<b>Occupancy</b>	Mark one	<input checked="" type="checkbox"/> Vacant possession		<input type="checkbox"/> Subject to tenancy		
<b>Breach of covenant or unit articles</b>	Description (Insert other breaches)	As disclosed in the Required Documents and				
<b>Goods</b>	Description					
<b>Date for Registration of Units Plan</b>						
<b>Date for Completion</b>						
<b>Residential Withholding Tax</b>	New residential premises?			<input type="checkbox"/> No	<input type="checkbox"/> Yes	
	Potential residential land?			<input type="checkbox"/> No	<input type="checkbox"/> Yes	
	Buyer required to make a withholding payment?			<input type="checkbox"/> No	<input type="checkbox"/> Yes <small>(insert details on p.4)</small>	
<b>Foreign Resident Withholding Tax</b>	Relevant Price more than \$750,000.00?			<input type="checkbox"/> No	<input type="checkbox"/> Yes	
	Clearance Certificates attached for all the Sellers?			<input type="checkbox"/> No	<input type="checkbox"/> Yes	

An agent may only complete the details in this black box and exchange this contract. See page 3 for more information.						
<b>Buyer</b>	Full name					
	ACN/ABN					
	Address					
<b>Buyer Solicitor</b>	Firm					
	Ref					
	Phone			Fax		
	DX/Address					
<b>Price</b>	Price	\$	(GST inclusive unless otherwise specified)			
	Less deposit	\$	(10% of Price)		<input type="checkbox"/> Deposit by Instalments <i>(clause 52 applies)</i>	
	Balance	\$				
<b>Date of This Contract</b>						

<b>Co-Ownership</b>	Mark one (show shares)	<input type="checkbox"/> Joint tenants	<input type="checkbox"/> Tenants in common in the following shares:
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**Read This Before Signing:** Before signing this contract you should ensure that you understand your rights and obligations. You should read the important notes on page 3. You should get advice from your solicitor.

<b>Seller signature</b>	<b>Buyer signature</b>
Seller Witness name and signature	Buyer Witness name and signature

## Seller Disclosure Documents

The following marked documents are attached and form part of this Contract. The Buyer acknowledges that by execution of this Contract the Buyer certifies in writing that the Buyer received the marked documents prior to entering into this Contract.

- ☐ Crown lease of the Land (including variations)
- ☒ Current edition of the certificate of title for the crown lease
- ☒ Deposited Plan for the Land
- ☒ Energy Efficiency Rating Statement
- ☐ Encumbrances shown on the certificate of title (excluding any mortgage or other encumbrance to be discharged)
- ☐ If there is an encumbrance not shown on the certificate of title — a statement about the encumbrance complying with the Civil Law (Sale of Residential Property) Regulations
- ☒ Lease Conveyancing Inquiry Documents for the Property
- ☐ Building Conveyancing Inquiry Document (except if:
  - the Property is a Class A Unit
  - the residence on the Property has not previously been occupied or sold as a dwelling; or
  - this Contract is an “off-the-plan purchase”)
- ☐ Building and Compliance Inspection Report(s) (except if section 9(2)(a)(ii) or section 9(2)(a)(iii) of the Sale of Residential Property Act applies). The inspection must have been carried out no earlier than 3 months before the Property was advertised or offered for sale, and if the Seller has obtained 2 or more reports in that period, each report.
- ☐ Pest information (except if the property is a Class A Unit, or is a residence that has never been occupied): Pest Inspection Report(s). The inspection must have been carried out no earlier than 3 months before the Property was advertised or offered for sale and, if the Seller has obtained 2 or more reports in the period 6 months before advertising or offering for sale, each report.

### If the Property is off-the-plan:

- ☐ proposed plan
- ☐ inclusions list

### If the Property is a Unit where the Units Plan has registered:

- ☒ Units Plan concerning the Property
- ☒ current editions of the certificate of title for the Common Property
- ☒ (if the unit is a Class A Unit) minutes of meetings of the Owners Corporation and executive committee for the 2 years before the Property was advertised or offered for sale
- ☒ Section 119 Certificate
- ☐ registered variations to the articles of the Owners Corporation

### If the Property is a Unit where the Units Plan has not registered:

- ☐ proposed Units Plans or sketch plan
- ☐ inclusions list
- ☐ the Default Rules
- ☐ details of any contract the Developer intends the Owners Corporation to enter, including:
  - the amount of the Buyer's General Fund Contribution that will be used to service the contract; and
  - any personal or business relationship between the Developer and another party to the contract
- ☐ the Developer's estimate, based on reasonable grounds, of the Buyer's General Fund Contribution for 2 years after the Units Plan is registered
- ☐ if a Staged Development of the Units is proposed — the proposed Development Statement and any amendment to the statement

### If the Property is a Lot that is part of a Community Title Scheme:

- ☐ Section 67 Statement, as first or top sheet
- ☐ Community Title Master Plan
- ☐ Community Title Management Statement

### If the Property is a Lot that will form part of a Community Title Scheme:

- ☐ proposed Community Title Master Plan or sketch plan
- ☐ proposed Community Title Management Statement

### GST

- ☒ Not applicable
- ☐ Input taxed supply of residential premises
- ☐ Taxable supply (including new residential premises)
- ☐ GST-free supply of going concern
- ☐ Margin scheme applies

### Tenancy

- ☐ Tenancy Agreement
- ☐ No written Tenancy Agreement exists

### Invoices

- ☐ Building and Compliance Inspection Report
- ☐ Pest Inspection Report

### Asbestos

- ☒ Asbestos Advice
- ☐ Current Asbestos Assessment Report

### Tenancy Summary

Premises		Expiry date	
Tenant name		Rent	
Commencement date		Rent review date	
Term		Rent review mechanism	

### Managing Agent Details for Owners Corporation or Community Title Scheme (if no managing agent, secretary)

Name	ACT Strata Management	Phone	(02) 6281 3172
Address	5 Lyons Place, Lyons ACT 2606		

## RW Amount

(residential withholding payment) — further details

The supplier will frequently be the Seller. However, sometimes further information will be required as to which entity is liable for GST (eg if the Buyer is part of a GST group, where the GST representative has the GST liability). If more than one supplier, provide details for each supplier.

<b>Supplier</b>	Name			
	ABN		Phone	
	Business address			
	Email			
<b>Residential Withholding Tax</b>	Supplier's portion of the RW Amount:			\$
	RW Percentage:			%
	RW Amount (ie the amount that the Buyer is required to pay to the ATO):			\$
	Is any of the consideration not expressed as an amount in money?	<input type="checkbox"/> No <input type="checkbox"/> Yes		
	If 'Yes', the GST inclusive market value of the non-monetary consideration:			\$
	Other details (including those required by regulation or the ATO forms):			

## Cooling Off Period

(for residential property only)

- 1 The Buyer may rescind this Contract at any time before 5pm on the 5th Business Day after the day this Contract is made except if any circumstance in paragraph 2 applies.
- 2 There is no cooling off period if:
  - the Buyer is a corporation; or
  - the Property is sold by tender; or
  - the Property is sold by auction; or
  - before signing this Contract, the Buyer gives the Seller a certificate in the form required by the Sale of Residential Property Act signed by the Buyer Solicitor; or
  - this Contract is made on the same day the Property was offered for sale by auction but passed in and the Buyer was recorded in the bidders record as a bidder or a person for whom a bidder was bidding.
- 3 A Buyer exercising the cooling off right by rescinding this Contract forfeits 0.25% of the Price. The Seller is entitled to recover the amount forfeited from the Deposit and the Buyer is entitled to a refund of any balance.

## Warnings

- 1 The Lease may be affected by the *Residential Tenancies Act 1997 (ACT)* or the *Leases (Commercial & Retail) Act 2001 (ACT)*.
- 2 If a consent to transfer is required by law, see clause 4 as to the obligations of the parties.
- 3 As some risks associated with the Property pass from the Seller to Buyer on the Date of this Contract, (except if the Property is a Unit) the Buyer should take out insurance on the Property on the Date of this Contract.
- 4 The Buyer will usually have to pay stamp duty on the purchase of the Land. The Buyer may incur penalties if the Buyer does not pay the stamp duty within the required time.
- 5 There are serious risks to a Buyer releasing the Deposit before Completion. The Buyer should take legal advice before agreeing to release the Deposit.
- 6 The Buyer should consider the application of the Territory Plan and other planning and heritage issues before signing this Contract.
- 7 If the Lease is a concessional lease then restrictions on transfer and other dealings may apply.

## Disputes

If there is a dispute, the Law Society encourages the use of informal procedures such as negotiation, independent expert appraisal or mediation to resolve the dispute.

## Exchange of Contract

- 1 An Agent, authorised by the Seller, may:
  - insert:
    - the name and address of, and contact details for, the Buyer;
    - the name and address of, and contact details for, the Buyer Solicitor;
    - the Price;
    - the Date of this Contract,
  - insert in, or delete from, the Goods; and
  - exchange this Contract.
- 2 An Agent must not otherwise insert, delete or amend this Contract.
- 3 **The Agent must not exchange this Contract unless expressly authorised by the Seller or (if a solicitor is acting for the Seller) by the Seller or the Seller Solicitor.**

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The Seller agrees to sell and the Buyer agrees to buy the Property for the Price on these terms:

### 1. Definitions and interpretation

- 1.1 Definitions appear in the Schedule and as follows:

**Affecting Interests** means any mortgage, encumbrance, lease, lien, charge, notice, order, caveat, writ, or other interest;

**Agent** has the meaning in the Sale of Residential Property Act;

**ATO** means the Australian Taxation Office, and includes the Commissioner for Taxation;

**Balance of the Price** means the Price less the Deposit;

**Breach of Covenant** means:

- a Development not approved under the Planning Act including a development for which design and siting approval has not been obtained;
- a breach of the Building and Development Provision;
- a breach of any obligation of the Seller in a registered restrictive covenant affecting the Lease;

- a breach of any other term of the Lease;
- a breach of the articles of the Owners Corporation (if the Property is a Unit); or
- an Unapproved Structure;

**Building Act** means the *Building Act 2004* (ACT);

**Building and Development Provision** has the meaning in the Planning Act;

**Building Conveyancing Inquiry Document** has the meaning in the Sale of Residential Property Act;

**Building and Compliance Inspection Report** has the meaning in the Sale of Residential Property Act;

**Business Day** means any day other than a Saturday, Sunday, public holiday or bank holiday in the Australian Capital Territory;

**Class A Unit** has the meaning in the Sale of Residential Property Act;

**Common Property** for a Unit has the meaning in the Unit Titles Act;

**Common Property** for a Lot that forms part of a Community Title Scheme has the meaning in the Community Title Act;

**Community Title Act** means the *Community Title Act 2001* (ACT);

**Community Title Body Corporate** means the entity referred to as such in the Community Title Act;

**Community Title Management Statement** has the meaning in the Community Title Act;

**Community Title Master Plan** has the meaning in the Community Title Act;

**Community Title Scheme** has the meaning in the Community Title Act;

**Completion** means the time at which this Contract is completed;

**Compliance Certificate** means a certificate issued for the Lease under section 296 of the Planning Act or under section 28 of the *City Area Leases Act 1936* or under section 180 of the Land Act;

**Covenant** includes a restrictive covenant;

**Default Notice** means a notice in accordance with clause 18.5 and clause 18.6;

**Default Rules** has the meaning in the Unit Titles Management Act;

**Deposit** means the deposit forming part of the Price;

**Developer** in respect of a Unit has the meaning in the Unit Titles Act; in respect of a Lot has the meaning in the Community Title Act;

**Developer Control Period** has the meaning in the Unit Titles Management Act;

**Development** has the meaning in the Planning Act;

**Development Statement** has the meaning in the Unit Titles Act;

**Encumbrance** has the meaning in the Sale of Residential Property Act but excludes a mortgage;

**Energy Efficiency Rating Statement** has the meaning in the Sale of Residential Property Act;

**General Fund Contribution** has the meaning in section 78(1) of the Unit Titles Management Act;

**GST** has the meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**GST Rate** means the prevailing rate of GST specified as a percentage;

**Improvements** means the buildings, structures and fixtures erected on and forming part of the Land;

**Income** includes the rents and profits derived from the Property;

**Land Act** means the *Land (Planning & Environment) Act 1991* (ACT);

**Land Charges** means rates, land rent, land tax and other taxes and outgoings of a periodic nature in respect of the Property;

**Land Rent Act** means the *Land Rent Act 2008* (ACT);

**Land Rent Lease** means a Lease that is subject to the Land Rent Act;

**Lease** means the lease of the Land having the meaning in the Planning Act;

**Lease Conveyancing Inquiry Document** has the meaning in the Sale of Residential Property Act;

**Legislation Act** means the *Legislation Act 2001*;

**Liability of the Owners Corporation** means any actual or contingent liability of the Owners Corporation attributable to the Unit on a Unit Entitlement basis (other than normal operating expenses) or expenditure to be made by the Owners Corporation to fulfil its obligations under the Unit Titles Management Act;

**Lot** has the meaning in the Community Title Act;

**Non-Land Rent Lease** means a Lease that is not subject to the Land Rent Act;

**Notice to Complete** means a notice in accordance with clause 18.1 and clause 18.2 requiring a party to complete;

**Owners Corporation** means the Owners Corporation for the Unit constituted or to be constituted under the Unit Titles Management Act following registration of the Units Plan;

**Pest Inspection Report** has the meaning in the Sale of Residential Property Act;

**Pest Treatment Certificate** has the meaning in the Sale of Residential Property Act;

**Planning Act** means the *Planning and Development Act 2007* (ACT);

**Planning and Land Authority** has the meaning in the Legislation Act;

**Prescribed Building** has the meaning in the Building Act;

**Prescribed Terms** has the meaning in the Residential Tenancies Act;

**Property** means the unexpired term of the Lease, the Improvements and the Goods, or (if the Land is a Unit) the unexpired term of the Unit Lease, the Improvements and the Goods;

**Required Documents** has the meaning in the Sale of Residential Property Act and includes a Section 119 Certificate but excludes a copy of this Contract;

**Rescission Notice** has the meaning in the Sale of Residential Property Act;

**Residential Tenancies Act** means the *Residential Tenancies Act 1997* (ACT);

**Sale of Residential Property Act** means the *Civil Law (Sale of Residential Property) Act 2003* (ACT);

**Section 119 Certificate** means a certificate for the Unit issued under section 119 of the Unit Titles Management Act;

**Section 56 Certificate** means a certificate for a Lot issued under section 56 of the Community Title Act;

**Section 67 Statement** means a statement for a Lot complying with section 67(2)-(4) of the Community Title Act;

**Service** includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television, or water service;

**Staged Development** has the meaning given by section 17(4) of the Unit Titles Act;

**Tenancy Agreement** includes a lease for any term and whether for residential purposes or otherwise;

**Unapproved Structure** has the meaning in the Sale of Residential Property Act;

**Unit** means the Unit referred to in the Schedule and which has the meaning in the Unit Titles Act;

**Unit Entitlement** for the Unit has the meaning in the Unit Titles Act;

**Unit Title** is the Lease together with the rights of the registered lessee of the Unit;

**Unit Titles Act** means the *Unit Titles Act 2001* (ACT);

**Unit Titles Management Act** means the *Unit Titles (Management) Act 2011* (ACT)

**Units Plan** means all the documents relating to the subdivision of the Land registered as the Units Plan for the Unit under the *Land Titles (Unit Titles) Act 1970*; and

**Withholding Law** means Subdivision 14 of Schedule 1 of the *Taxation Administration Act 1953* (Cth) and associated provisions.

1.2 In this Contract:

- a reference to the Seller or to the Buyer includes the executors, administrators and permitted assigns of any of them, if an individual, and the successors or permitted assigns of any of them, if a corporation;
- the singular includes the plural, and the plural includes the singular;
- a reference to a person includes a body corporate;
- a term not otherwise defined has the meaning in the Legislation Act;
- a reference to an Act includes a reference to any subordinate legislation made under it or any Act which replaces it.

1.3 Headings are inserted for convenience only and are not part of this Contract.

1.4 If the time for something to be done or to happen is not a Business Day, the time is extended to the next Business Day, except in the case of clause 2.1.

1.5 A reference to “this Contract” extends to the Schedule, any annexure, additional clauses and attachments forming part of this Contract.

1.6\* If there is more than one buyer or more than one seller the obligations which they undertake bind them jointly and individually.

1.7 Where the Buyer consists of more than one person, as between themselves, they agree to buy the Property in the specified manner of Co-ownership or if one alternative is not marked, as joint tenants.

## 2. Terms of payment

2.1 The Buyer must pay the Deposit on the Date of this Contract, to the Stakeholder or, if no Stakeholder is named, then to the Seller.

2.2 The Deposit becomes the Seller’s property on Completion.

2.3 The Deposit may be paid by cheque or in cash (up to \$3,000.00) but if it is not paid on time or, if it is paid by cheque which is not honoured on first presentation, the Buyer is in default.

2.4 If the Buyer is in default under clause 2.3, then immediately and without the notice otherwise necessary under clause 18, clause 19 applies.

2.5 On Completion the Buyer must give the Seller an authority directing the Stakeholder to account to the Seller for the Deposit.

2.6 On Completion the Buyer must pay to the Seller in Canberra the Balance of the Price by unendorsed bank cheque, or in cash (up to \$200.00).

2.7 Any money payable to the Seller by the Buyer or the Stakeholder must be paid to the Seller or as the Seller Solicitor directs in writing and payment in accordance with that direction will be sufficient discharge to the person paying.

2.8 Completion must take place on the Date for Completion or as otherwise determined by this Contract and if not specified or determined, within a reasonable time.

## 3. Title to the Lease

3.1 The Lease is or will before Completion be granted under the Planning Act.

3.2 The Lease is transferred subject to its provisions.

3.3 The title to the Lease is or will before Completion be registered under the *Land Titles Act 1925*.

3.4 The title to the Lease must be transferred free from all Affecting Interests except as otherwise provided.

3.5 The Buyer cannot insist on any Affecting Interests being removed from the title to the Lease before Completion provided, on Completion, the Seller gives the Buyer any documents and registration fees necessary to remove the Affecting Interests.

## 4. Restrictions on transfer

4.1 The Lease is not subject to any restrictions on transfer other than any Restriction on Transfer.

4.2 If the Lease is subject to a Restriction on Transfer under the Planning Act due to non-compliance with the Building and Development Provision then this Contract is subject to the grant of the

- unconditional consent referred to in section 298 of the Planning Act. A Restriction on Transfer referring to "section 298" refers to this restriction.
- 4.3 If the Lease is granted under the Planning Act and is a lease of the type referred to in section 251 of the Planning Act then this Contract is subject to the grant of the unconditional consent in section 251 and section 252 of the Planning Act. A Restriction on Transfer referring to "section 251" refers to this restriction.
- 4.3A If the Lease is subject to a Restriction on Transfer under section 265 of the Planning Act, then this Contract is subject to the grant of the unconditional consent in sections 265 and 266 of the Planning Act. A Restriction on Transfer referring to "section 265" refers to this restriction.
- 4.4 Immediately after the Date of this Contract the Seller must do everything reasonably necessary to remove the restriction or obtain the consent required. If requested in writing, the Buyer must join in any application of the Seller and must do everything reasonably necessary to enable the Seller to obtain the consent. The Seller must pay all associated fees in connection with the application.
- 4.5 If the consent referred to in clauses 4.2, 4.3 or 4.3A is not granted by the Date for Completion then either party may rescind this Contract (provided that the party seeking to rescind is not then in default) and clause 21 applies.
- 5. Particulars of title and submission of transfer**
- 5.1 Unless clause 5.3 applies the Seller need not provide particulars of title.
- 5.2 Within 7 days after the Date of this Contract the Seller must give the Buyer a transfer of the Lease in the form prescribed by the *Land Titles Act 1925* executed by the Seller, with the seller verification details having been completed, along with a copy of the seller verification declaration confirmation email (or emails, if applicable) issued to the Seller by the ACT Government, to be held by the Buyer on trust for the Seller until Completion only for the purpose of:
- 5.2.1 signing the transfer;
- 5.2.2 completing the Buyer details and Co-ownership details in the transfer in accordance with this Contract; and
- 5.2.3 stamping the transfer by the Buyer (if applicable),
- and the Buyer must immediately return the transfer and the copy of the seller verification declaration confirmation email (or emails, if applicable) if the Seller demands it.
- 5.3 If the Seller is not the registered proprietor of the Lease at the Date of this Contract, the Seller must give to the Buyer no later than 14 days before the Date for Completion a copy of the instrument and any other documents necessary to enable the Seller to be registered as proprietor.
- 6. Buyer rights and limitations**
- 6.1 If the Buyer establishes before Completion that except as disclosed in this Contract there is any Unapproved Structure on the Property, then the Buyer may:
- 6.1.1 require the Seller to arrange for the Unapproved Structure to be approved before Completion; and
- 6.1.2 if the Unapproved Structure is not approved before Completion, rescind or complete and sue the Seller for damages.
- 6.2 If the Buyer establishes, immediately before Completion, that, except as disclosed in this Contract:
- 6.2.1 the Property is subject to an encumbrance other than the encumbrances shown on the title to the Lease; or
- 6.2.2 the Buyer is not entitled to vacant possession,
- then the Buyer may either:
- 6.2.3 rescind; or
- 6.2.4 complete and sue the Seller for damages.
- 6.3 The Buyer is not entitled to make any requisitions on the title to the Property.
- 6.4 The Buyer cannot make a claim or objection or rescind or terminate in respect of:
- 6.4.1 a Service for the Property being a joint service or passing through another property, or any Service for another property passing through the Property;
- 6.4.2 a wall being or not being a party wall or the Property being affected by an easement for support or not having the benefit of an easement for support;
- 6.4.3 any change in the Property due to fair wear and tear before Completion;
- 6.4.4 a promise, representation or statement about this Contract, the Property or the Lease, not made in this Contract;
- 6.4.5 any Breach of Covenant described in the Schedule or disclosed elsewhere in this Contract;
- 6.4.6 the ownership or location of any dividing fence;

- 6.4.7 the ownership of any fuel storage tank; and
- 6.4.8 anything disclosed in this Contract (except an Affecting Interest).

## 7. Seller warranties

### 7.1 The Seller warrants that at the Date of this Contract:

- 7.1.1 the Seller will be able to complete at Completion;
- 7.1.2 the Seller has no knowledge of any unsatisfied judgment, order or writ affecting the Property;
- 7.1.3 the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property; and
- 7.1.4 the Seller is not aware of any material change in the matters disclosed in the Required Documents.

### 7.2 The Seller warrants that on Completion:

- 7.2.1 the Seller will be or will be able to be the registered proprietor of the Lease and will own the rest of the Property free from any Affecting Interests;
- 7.2.2 the Seller will have the capacity to complete;
- 7.2.3 there will be no unsatisfied judgment, order or writ affecting the Property;
- 7.2.4 the Seller has no knowledge of any current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property;
- 7.2.5 the Seller is not aware of any encroachments by or upon the Property except as disclosed. This warranty does not extend to the location of any dividing fence;
- 7.2.6 there will be no Breach of Covenant except as disclosed in this Contract; and
- 7.2.7 unless disclosed in the Schedule or elsewhere in this Contract, the Lease is a Non-Land Rent Lease and not a Land Rent Lease.

### 7.3 The Seller gives no warranties as to the present state of repair of any of the Improvements or condition of the Land, except as required by law.

## 8. Adjustments

### 8.1 Subject to clause 8.2:

- 8.1.1 the Seller is entitled to the Income and is liable for all Land Charges up to and including Completion after which the Buyer will be entitled to the Income and liable for the Land Charges; and

- 8.1.2 the parties must pay any adjustment of the Income and Land Charges calculated under this clause on Completion.

### 8.2 If the Property is liable to land tax, the Seller must pay it on or before Completion and no adjustment of land tax will be made if the Buyer warrants (in writing if the Seller requires it) that the Buyer is or will on Completion be entitled to an exemption from land tax.

### 8.3 Any concessional Land Charges must be adjusted on the concessional amount of those Land Charges.

### 8.4 If any of the Land Charges have not been assessed on Completion, the Buyer will be entitled to retain in the Buyer Solicitor trust account from the Balance of the Price an amount sufficient to pay the Seller's proportion of those Land Charges.

### 8.5 Attached are copies of the relevant invoices for the cost of obtaining the Building and Compliance Inspection Report and Pest Inspection Report. The Buyer must pay to the Seller the cost of obtaining the Building and Compliance Inspection Report and the Pest Inspection Report as required by section 18 of the Sale of Residential Property Act on Completion.

## 9. Terms of possession

### 9.1 The Seller must give the Buyer vacant possession of the Property on Completion unless otherwise marked in the Schedule.

### 9.2 If the Property is sold subject to a tenancy, the Seller has:

- 9.2.1 attached to this Contract a copy of the signed Tenancy Agreement; or
- 9.2.2 completed the tenancy summary on page 2 of this Contract.

### 9.3 If the Property is sold subject to a tenancy:

- 9.3.1 the Seller warrants that except as disclosed in this Contract:
  - (a) if applicable, the rental bond has been provided in accordance with the Residential Tenancies Act;
  - (b) if applicable, the Seller has complied with the Residential Tenancies Act;
  - (c) if applicable, the Seller has no notice of any application by the tenant for the release of the rental bond;
  - (d) no notices relating to the tenancy have been served on the Seller or any agent of the Seller or on the tenant other than as disclosed in this Contract and there are no outstanding claims or disputes with the tenant;



- (e) there is no unremedied breach of the Tenancy Agreement by the tenant or the Seller; and
    - (f) if applicable, the Tenancy Agreement incorporates:
      - (i) the Prescribed Terms; and
      - (ii) any other terms approved by the Residential Tenancies Tribunal.
  - 9.3.2 The Seller must hand to the Buyer on Completion:
    - (a) any written Tenancy Agreement to which this Contract is subject;
    - (b) a notice of attornment;
    - (c) if applicable, any notice required to be signed by the Seller to transfer the rental bond by the Office of Rental Bonds to the Buyer; and
    - (d) if applicable, any other notice required to be signed by the Seller under the Residential Tenancies Act.
  - 9.3.3 The Buyer indemnifies the Seller in relation to any liability which the Seller incurs or to which the Seller is subject under the tenancy because of matters occurring after Completion.
- 10. Inspection and condition of Property**
- 10.1 The Buyer may on reasonable notice to the Seller and at reasonable times inspect the Property before Completion.
  - 10.2 The Seller must leave the Property clean and tidy on Completion.
- 11. Inspection of building file**
- 11.1 The Seller must, if requested by the Buyer, give to the Buyer all authorities necessary to enable the Buyer (or Buyer's nominee) to inspect and obtain at the Buyer's expense, copies of:
    - 11.1.1 any document in relation to the Land and Improvements held by any government or statutory authority; and
    - 11.1.2 any notices issued by any authority in relation to the Land and Improvements.
- 12. Additional Seller obligations**
- 12.1 Except for any Breach of Covenant disclosed in this Contract, the Seller must before Completion:
    - 12.1.1 comply with any notice issued by any authority before the Date of this Contract which requires work to be done or money to be spent on or in relation to the Property or the Lease;
    - 12.1.2 obtain approval for any Development conducted on the Land;
    - 12.1.3 comply with the Lease to the extent to which the Seller is required to comply up to Completion;
    - 12.1.4 comply with any obligations on the Seller in a registered restrictive covenant affecting the Lease; and
    - 12.1.5 give the Buyer notice of any material change (other than fair wear and tear) the Seller becomes aware of in the matters disclosed in the Required Documents, since the date of each of the relevant Required Documents.
- 13. Compliance Certificate**
- 13.1 The Seller must give to the Buyer on Completion a Compliance Certificate unless:
    - 13.1.1 the Lease does not contain a Building and Development Provision; or
    - 13.1.2 the Lease is sold subject to non compliance with the Building and Development Provision within the meaning of clause 4.2; or
    - 13.1.3 a Compliance Certificate has issued before the Date of this Contract and is either noted on the certificate of title for the Lease or the Seller gives to the Buyer other evidence acceptable to the Registrar General that a Compliance Certificate has issued.
  - 13.2 The Seller must give to the Buyer on Completion evidence of approval to conduct any Development on the Land unless:
    - 13.2.1 approval for the Development has been granted by the relevant authority before the Date of this Contract; or
    - 13.2.2 the Development is disclosed as a Breach of Covenant in this Contract.
- 14. Off the plan purchase**
- 14.1 If the Lease contains a Building and Development Provision which has not been complied with at the Date of this Contract, and clause 4.2 does not apply, before the Date for Completion, the Seller must at the Seller's expense complete the construction of the Improvements promptly and in a good and workmanlike manner substantially in accordance with the proposed plan, specifications and inclusions list attached.

## 15. Goods

- 15.1 The Seller gives no warranties as to the present state of repair of any of the Goods except as required by law.
- 15.2 The Goods are included in the Price.
- 15.3 The Seller warrants that the Goods are unencumbered and that the Seller has the right to sell them.
- 15.4 The Goods become the Buyer's property on Completion.
- 15.5 Except for fair wear and tear, the Seller must give the Goods to the Buyer on Completion in the same state of repair they are in at the Date of this Contract.

## 16. Errors and misdescriptions

- 16.1 If, before Completion, the Buyer becomes aware of an error in the description of the Property the Buyer may:
  - 16.1.1 identify whether the error is material or not material, and ask the Seller to arrange for the error to be corrected before Completion; and
  - 16.1.2 if the error is not corrected before Completion:
    - (a) for an error that is material — rescind this Contract, or complete this Contract and make a claim for compensation; and
    - (b) for an error that is not material — complete this Contract and make a claim for compensation.
- 16.2 This clause applies even if the Buyer did not take notice of or rely on anything in this Contract containing or giving rise to the error or misdescription.
- 16.3 The Buyer is not entitled to compensation to the extent the Buyer knew the true position before the Date of this Contract.

## 17. Compensation claims by Buyer

- 17.1 To make a claim for compensation (including a claim under clause 16) the Buyer must give notice to the Seller before Completion specifying the amount claimed and:
  - 17.1.1 the Seller can rescind if in the case of a claim that is not a claim for delay:
    - (a) the total amount claimed exceeds 5% of the Price;
    - (b) the Seller gives notice to the Buyer of an intention to rescind; and

- (c) the Buyer does not give notice to the Seller waiving the claim within 14 days after receiving the notice; and

- 17.1.2 if the Seller does not rescind under clause 17.1.1, the parties must complete and:

- (a) the lesser of the total amount claimed and 5% of the Price must be paid out of the Price to, and held by, the Stakeholder until the claim is finalised or lapses;

- (b) the amount held is to be invested by the Stakeholder (at the risk of the party who becomes entitled to it) with an Australian bank in an interest bearing account at call in the name of the Stakeholder in trust for the Seller and the Buyer;

- (c) the claim must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 28 days of Completion, by an arbitrator appointed by the President of the Law Society of the Australian Capital Territory at the request of a party;

- (d) the decision of the arbitrator is final and binding;

- (e) the costs of the arbitration must be shared equally by the parties unless otherwise determined by the arbitrator. For clarity, the arbitrator has the power to award indemnity costs on a legal basis against either party;

- (f) the Buyer is not entitled, in respect of the claim, to more than the total amount claimed and the costs of the Buyer;

- (g) interest on the amount held, after deduction of all taxes and bank charges, Stakeholder administration fee and other similar charges and expenses, must be paid to the parties equally or as otherwise determined by the arbitrator; and

- (h) the claim lapses if the parties do not appoint an arbitrator and neither party asks the President of the Law Society of the Australian Capital Territory to appoint an arbitrator within 90 days after Completion and the amount held by the Stakeholder must be paid immediately to the Seller without any further authority being necessary.

**18. Notice to Complete and Default Notice**

- 18.1 If Completion does not take place in accordance with clause 2.8, either party may, at any time after the Date for Completion, serve the other party a Notice to Complete.
- 18.2 A Notice to Complete must appoint a time during business hours and a date being not less than 14\* days after service of the Notice to Complete (excluding the date of service) by which and a place in Canberra at which to complete this Contract.
- 18.3 At the time the Notice to Complete is served the party serving the Notice to Complete must:
- 18.3.1 not be in default; and
  - 18.3.2 be ready willing and able to complete but for some default or omission of the other party.
- 18.4 Completion at the time date and place specified in the Notice to Complete is an essential term.
- 18.5 Where one party is in default (other than failing to complete) the other party may at any time after the default serve the party in default a Default Notice.
- 18.6 A Default Notice:
- 18.6.1 must specify the default;
  - 18.6.2 must require the party served with the Default Notice to rectify the default within 7\*\* days after service of the Default Notice (excluding the date of service), except in the case of a Default Notice for the purposes of clause 52.6, in which case the period specified in clause 52.6 will apply; and
  - 18.6.3 cannot be used to require a party to complete this Contract.
- 18.7 At the time the Default Notice is served, the party serving the Default Notice must not be in default.
- 18.8 The time specified in a Default Notice to rectify the specified default is an essential term.
- 18.9 Clauses 19 or 20 will apply as appropriate where the party served does not comply with the Notice to Complete or the Default Notice which complies with this clause.
- 18.10 If the party serving a notice under this clause varies the time referred to in the notice at the request of the other party, the time agreed to in the variation remains an essential term. The consent to the variation must be in writing and be served on the other party.

- 18.11 The parties agree that the time referred to in clauses 18.2 and 18.6.2 is fair and reasonable.

**19. Termination — Buyer default**

- 19.1 If the Buyer does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term then the Seller may by notice served on the Buyer terminate and may then keep, or recover and keep, the Deposit (except so much of it as exceeds 10% of the Price) and either:
- 19.1.1 sue the Buyer for breach; or
  - 19.1.2 resell the Property and any deficiency arising on the resale and all expenses of and incidental to the resale or attempted resale and the Buyer's default are recoverable by the Seller from the Buyer as liquidated damages provided the Seller has entered into a contract for the resale of the Property within 12 months of termination.
- 19.2 In addition to any money kept or recovered under clause 19.1, the Seller may retain on termination any other money paid by the Buyer as security for any damages awarded to the Seller arising from the Buyer's default provided that proceedings for the recovery of damages are commenced within 12 months of termination.

**20. Termination — Seller default**

- 20.1 If the Seller does not comply with a Notice to Complete or a Default Notice or is otherwise in breach of an essential term the Buyer may by notice served on the Seller either:
- 20.1.1 terminate and seek damages; or
  - 20.1.2 enforce without further notice any other rights and remedies available to the Buyer.
- 20.2 If the Buyer terminates, the Stakeholder is authorised to refund to the Buyer immediately any money paid on account of the Price.

**21. Rescission**

- 21.1 Unless section 15 of the Sale of Residential Property Act applies, if this Contract is rescinded, it is rescinded from the beginning, and unless the parties otherwise agree:
- 21.1.1 the Deposit and all other money paid by the Buyer must be refunded to the Buyer immediately without any further authority being necessary; and
  - 21.1.2 neither party is liable to pay the other any amount for damages, costs or expenses.

\* Alter as necessary

\*\* Alter as necessary

## 22. Damages for delay in Completion

- 22.1 If Completion does not occur by the Date for Completion, due to the default of either party, the party who is at fault must pay the other party as liquidated damages on Completion:
- 22.1.1 if the defaulting party is the Seller interest on the Price at the rate of %\* per annum calculated on a daily basis from the date 7 days after the Date for Completion to Completion;
  - 22.1.2 if the defaulting party is the Buyer interest on the Price at the rate of %\*\* per annum calculated on a daily basis from the date 7 days after the Date for Completion to Completion; and
  - 22.1.3 the amount of \$440.00\* (including GST) to be applied towards any legal costs and disbursements incurred by the party not at fault if Completion occurs later than 7 days after the Date for Completion.
- 22.2 Whether or not percentages are inserted in clauses 22.1.1 or 22.1.2 the party at fault must pay the amount specified in clause 22.1.3 in addition to any other damages to which the party not at fault is entitled both at law and under this Contract.
- 22.3 The parties agree that:
- 22.3.1 the amount of any damages payable under clause 22.1.1 or clause 22.1.2 to the party not in default is a genuine and honest pre-estimate of loss to that party for the delay in Completion, and
  - 22.3.2 the damages must be paid on Completion.

## 23. Foreign Buyer

- 23.1 The Buyer warrants the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer of the Lease under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- 23.2 This clause is an essential term.

## 24. GST

- 24.1 If a party must pay the Price or provide any other consideration to another party under this Contract, GST is not to be added to the Price or amount, unless this Contract provides otherwise.
- 24.2 If the Price is stated in the Schedule to exclude GST and the sale of the Property is a taxable supply, the Buyer must pay to the Seller on Completion an amount equal to the GST payable by the Seller in relation to the supply.

- 24.3 If under this Contract a party (**Relevant Party**) must make an adjustment, pay an amount to another party (excluding the Price but including the Deposit if it is released or forfeited to the Seller) or pay an amount payable by or to a third party:
- 24.3.1 the Relevant Party must adjust or pay at that time any GST added to or included in the amount; but
  - 24.3.2 if this Contract says this sale is a taxable supply, and payment would entitle the Relevant Party to claim an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment or payment is or was entitled multiplied by the GST Rate.
- 24.4 If this Contract says this sale is the supply of a going concern:
- 24.4.1 the parties agree the supply of the Property is the supply of a going concern;
  - 24.4.2 the Seller must on Completion supply to the Buyer all of the things that are necessary for the continued operation of the enterprise;
  - 24.4.3 the Seller must carry on the enterprise until Completion;
  - 24.4.4 the Buyer warrants to the Seller that on Completion the Buyer will be registered or required to be registered;
  - 24.4.5 if for any reason (and despite clauses 24.1 and 24.4.1) the sale of the Property is not the supply of a going concern but is a taxable supply:
    - (a) the Buyer must pay to the Seller on demand the amount of any GST payable by the Seller in respect of the sale of the Property; and
    - (b) the Buyer indemnifies the Seller against any loss or expense incurred by the Seller in respect of that GST and any breach of clause 24.4.5(a).
- 24.5 If this Contract says the margin scheme applies:
- 24.5.1 the Seller warrants that it can use the margin scheme; and
  - 24.5.2 the Buyer and Seller agree that the margin scheme is to apply,
- in respect of the sale of the Property.
- 24.6 If this Contract says the sale is a taxable supply, does not say the margin scheme applies to the sale of the Property, and the sale is in fact not a taxable supply, then the Seller must pay the Buyer on Completion an amount of one-eleventh of the Price.

\* Insert percentage

- 24.7 Unless the margin scheme applies the Seller must, on Completion, give the Buyer a tax invoice for any taxable supply by the Seller by or under this Contract.

## 25. Power of attorney

- 25.1 Any party who signs this Contract or any document in connection with it under a power of attorney must, on request and without cost, provide the other party with a true copy of the registered power of attorney.

## 26. Notices claims and authorities

- 26.1 Notices, claims and authorities required or authorised by this Contract must be in writing.

- 26.2 To serve a notice a party must:

26.2.1 leave it at; or

26.2.2 send it by a method of post requiring acknowledgment of receipt by the addressee to,

the address of the person to be served as stated in the Schedule or as notified by that person to the other as that person's address for service under this Contract; or

26.2.3 serve it on that party's solicitor in any of the above ways; or

26.2.4 by delivering it to an appropriate place in the facilities of a document exchange system in which the recipient solicitor has receiving facilities (and in the latter case service is deemed effected on the Business Day following delivery); or

26.2.5 send it by facsimile to a party's solicitor, unless it is not received (a notice is taken to have been received at the time shown in the transmission report that the whole facsimile was sent).

- 26.3 A party's solicitor may give a notice, claim or authority on behalf of that party.

## 27. Unit title

- 27.1 The following clauses 28 to 39 inclusive apply if the Property is a Unit.

## 28. Definitions and interpretation

- 28.1 A reference in these clauses 28 to 39 inclusive to a section or Part is a reference to a section or Part of the Unit Titles Management Act.

- 28.2 For the purposes of a claim for compensation pursuant to clause 39, the provisions of clause 17 will apply provided that clause 17.1.1(c) is amended to read "the Buyer does not give notice

to the Seller waiving the claim, or so much of it as exceeds 5% of the Price within 14 days after receiving the notice".

## 29. Title to the Unit

- 29.1 Clauses 3.1, 3.2 and 3.3 do not apply.

- 29.2 The Unit Title is or will before Completion be granted under the Planning Act and is or will before Completion be registered under the *Land Titles (Unit Titles) Act 1970* (ACT).

- 29.3 The Unit Title is transferred subject to the Units Plan under which the lease to the Unit is held.

## 30. Buyer rights limited

- 30.1 In addition to clause 6, the Buyer cannot make any requisition on title or make a claim for compensation in respect of any Breach of Covenant of the Unit Title, any breach of the lease of the Common Property or breach of rules of the Owners Corporation disclosed in this Contract.

## 31. Adjustment of contribution

- 31.1 Any adjustment under clause 8 must include an adjustment of the contributions to the Owners Corporation under section 78 and section 89.

## 32. Inspection of Unit

- 32.1 For the purposes of clause 10.1 Property includes the Common Property.

## 33. Seller warranties

- 33.1 The Seller warrants that at the Date of this Contract:

33.1.1 to the Seller's knowledge, there are no unfunded latent or patent defects in the Common Property or Owners Corporation assets, other than the following:

(a) defects arising through fair wear and tear; and

(b) defects disclosed in this Contract;

33.1.2 the Owners Corporation records do not disclose any defects to which the warranty in clause 33.1.1 applies;

33.1.3 to the Seller's knowledge, there are no actual, contingent or expected unfunded liabilities of the Owners Corporation that are not part of the Owners Corporation's normal operating expenses, other than liabilities disclosed in this Contract;

- 33.1.4 the Owners Corporation records do not disclose any liabilities of the Owners Corporation to which the warranty in clause 33.1.3 applies;
- 33.1.5 the Seller or any occupier of the Unit has not committed any act or omission which may cause the Owners Corporation to incur any costs or perform any repairs;
- 33.1.6 there is no amount payable to the Owners Corporation by the Seller other than a contribution due under section 78 and section 89; and
- 33.1.7 except for an unregistered Units Plan, the rules of the Owners Corporation are, as appropriate:
- (a) as set out in Schedule 4 to the Unit Titles Management Act; or
  - (b) in respect of a corporation established under the *Unit Titles Act 1970 (repealed)* and that was in existence immediately prior to 30 March 2012, the articles in force immediately prior to 30 March 2012; or
  - (c) in respect of a corporation established under the Unit Titles Act and that was in existence immediately prior to 30 March 2012, the articles in force immediately prior to 30 March 2012; except for any alterations to those rules registered under section 108.
- 33.2 For clauses 33.1.1 to 33.1.4 inclusive, a Seller is taken to have knowledge of a thing if the Seller has actual knowledge, or ought reasonably to have knowledge, of that thing.
- 33.3 The Seller warrants that at Completion to the Seller's knowledge, there are no circumstances (other than circumstances disclosed in this Contract) in relation to the affairs of the Owners Corporation likely to materially prejudice the Buyer.
- 33.4 For the purposes of clause 7, Property includes the Common Property.
- 33.5 These warranties are in addition to those given in clause 7.
- 34. Damage or destruction before Completion**
- 34.1 If the Unit is destroyed or substantially damaged before Completion not due to the fault of either party then either party may by notice to the other rescind and clause 21 applies.
- 34.2 For the purposes of clause 34.1, the Unit is deemed to be substantially damaged if though not destroyed is unfit for the use to which it was being put at the Date of this Contract or, if not being used at that time, for the purpose permitted by the Unit Title.
- 35. Notice to Owners Corporation**
- 35.1 The parties must comply with the rules of the Owners Corporation in relation to notification of the sale and purchase of the Unit.
- 36. Section 119 Certificate**
- 36.1 On Completion the Buyer must pay to the Seller the fee as determined by the Minister pursuant to section 119(5) for the Section 119 Certificate attached.
- 37. Unregistered Units Plan**
- 37.1 This clause 37 applies if at the Date of this Contract, the Units Plan has not been registered.
- 37.2 The Seller must attach a copy of the proposed Units Plan or a sketch plan showing the location and dimensions of the Unit sufficient to enable the Buyer to determine the location and dimensions of the Unit in relation to other units and the Common Property in the proposed development.
- 37.3 If the Units Plan is not registered by the date specified in the Schedule, or elsewhere in this Contract, the Buyer may at any time after that date by notice served on the Seller require that the Units Plan be registered within 14 days of the service of the notice. If the Units Plan is not registered within the time limited by the notice the Buyer may at any time after expiry of the time in the notice rescind and clause 21 will apply.
- 37.4 If the Seller notifies the Buyer that the Units Plan is registered before rescission under this clause, the Buyer will not be entitled to rescind under this clause.
- 37.5 The Buyer cannot make any objection or requisition on title or claim for compensation in respect of:
- 37.5.1 any minor variations to the Unit between the plan attached, and the Units Plan registered by the Registrar General; or
  - 37.5.2 any minor alterations required by an authority or the Registrar General in the number, size, location or Unit Entitlement of any other unit in the Units Plan or in or to the Common Property provided the proportion of the Unit Entitlement of the Unit to the other units in the Units Plan is not varied.

In this clause, a minor variation is any variation less than 5% to either the size or value of the Unit described in the plan attached.

- 37.6 After the Owners Corporation has been constituted under section 8, the Seller must cause the Owners Corporation to comply with the rules of the Owners Corporation and with Parts 2, 3, 4, 5 and 7 to the extent to which the Owners Corporation is required by law to comply with those provisions up to the Date for Completion.
- 37.7 The Seller must not permit the Owners Corporation to vary the rules of the Owners Corporation from those set out in Schedule 4 of the Unit Title Management Act.
- 37.8 If clause 37.1 applies, the Seller must give to the Buyer a Section 119 Certificate at the Buyer's expense at least 7 days before Completion.
- 37.9 The parties acknowledge that the following must form part of this Contract:
  - 37.9.1 the Default Rules;
  - 37.9.2 details of any contract the Developer intends the Owners Corporation to enter, including:
    - (a) the amount of the Buyer's General Fund Contribution that will be used to service the contract; and
    - (b) any personal or business relationship between the Developer and another party to the contract;
  - 37.9.3 the Developer's estimate, based on reasonable grounds, of the Buyer's General Fund Contribution for 2 years after the Units Plan is registered;
  - 37.9.4 if a right to approve the keeping of animals during the Developer Control Period is reserved — details of the reservation, including the kind and number of animals; and
  - 37.9.5 if a Staged Development of the Units is proposed — the proposed Development Statement and any amendment to the statement.
- 37.10 The Developer warrants that the information disclosed under the items referred to in clauses 37.9.1 to 37.9.5 inclusive is accurate.
- 37.11 The Buyer may, by written notice given to the Developer, cancel this Contract before Completion if:
  - 37.11.1 the information disclosed within the items referred to in clauses 37.9.1 to 37.9.5 inclusive is incomplete or inaccurate; and

- 37.11.2 the Buyer is significantly prejudiced because the disclosure is incomplete or inaccurate.

## 38. Cancellation of Contract

- 38.1 The Buyer may, by written notice given to the Seller, cancel this Contract if there would be a breach of a warranty provided in any of clauses 33.1.1, 33.1.2, 33.1.3, 33.1.4 or 33.3.1, were this Contract completed at the time it is cancelled.
- 38.2 A notice under clause 38.1 must be given:
  - 38.2.1 if this Contract is entered before the Units Plan for the Unit is registered — not later than 3 days before the Buyer is required to complete this Contract; or
  - 38.2.2 in any other case — not later than 14 days after the later of the following happens:
    - (a) the Date of this Contract;
    - (b) another period agreed between the Buyer and Seller ends.
- 38.3 If the Buyer cancels this Contract, the Seller must repay any amount paid to the Seller towards the purchase of the Unit and otherwise the provisions of clause 21 will apply.

## 39. Claims for compensation

- 39.1 This clause 39 applies if, before Completion, the Buyer reasonably believes that, except as disclosed in this Contract, there would be a breach of a warranty established under any of clauses 33.1.1, 33.1.2, 33.1.3, 33.1.4 or 33.3.1 were this Contract to be completed.
- 39.2 The Buyer may, by written notice given to the Seller:
  - 39.2.1 tell the Seller:
    - (a) about the breach; and
    - (b) that the Buyer will complete this Contract; and
  - 39.2.2 claim compensation for the breach.
- 39.3 A notice under clause 39.2 must be given:
  - 39.3.1 if this Contract is entered before the Units Plan for the Unit is registered — not later than 3 days before the Buyer is required to complete this Contract; or
  - 39.3.2 in any other case — not later than 14 days after the later of the following happens:
    - (a) the Buyer's copy of the Contract is received by the Buyer;
    - (b) another period agreed between the Buyer and Seller ends.

## 40. Community title

- 40.1 The following clauses 41 to 50 inclusive apply if the Property is, or will on Completion form, a Lot within a Community Title Scheme.

## 41. Definitions and interpretation

- 41.1 A reference in these clauses 40 to 50 inclusive to a section or Part is a reference to a section or Part of the Community Title Act.

## 42. Buyer rights limited

- 42.1 In addition to clause 6, the Buyer cannot make any requisition on title or make a claim for compensation in respect of any breach of the lease of the Common Property or breach of rules or by-laws of the Community Title Body Corporate disclosed in this Contract.

## 43. Adjustment of contribution

- 43.1 Any adjustment under clause 8 must include an adjustment of the contributions to the fund under section 45.

## 44. Inspection of property

- 44.1 For the purposes of clause 10.1 Property includes the Common Property.

## 45. Unregistered Community Title Scheme

- 45.1 This clause 45 applies if at the Date of this Contract, the Community Title Scheme has not registered.
- 45.2 The Seller must attach a copy of the proposed Community Title Master Plan, or a sketch plan showing the location and dimensions of the Lot sufficient to enable the Buyer to determine the location and dimensions of the Lot in relation to other lots and the Common Property in the proposed scheme.
- 45.3 The Seller must attach a copy of the proposed Community Title Management Statement.
- 45.4 The Buyer cannot make any objection or requisition on title or claim for compensation in respect of:
- 45.4.1 any minor variations to the Lot between the plan attached, and the registered Community Title Master Plan; or
  - 45.4.2 any minor alterations required by an authority or the Registrar General in the number, size, location or entitlement of any other Lot in the Community Title Scheme or in or to the Common Property provided the proportion of the entitlement

of the Lot to the other lots in the Community Title Scheme is not varied; or

- 45.4.3 any minor variations between the proposed Community Title Management Statement and the registered Community Title Management Statement;

In this clause, a minor variation is any variation less than 5% to either the size or value of the Lot described in the plan attached and referred to in the proposed Community Title Management Statement.

- 45.5 The Seller must not permit the Community Title Body Corporate to vary the by-laws of the Community Title Scheme from those set out in Schedule 1 of the Community Title Act, unless otherwise disclosed in this Contract.
- 45.6 After the Community Title Body Corporate has been constituted under section 30, the Seller must cause the Community Title Body Corporate to comply with Part 8 to the extent to which the Community Title Body Corporate is required by law to comply with those provisions up to the Date for Completion.

## 46. Incomplete development of Community Title Scheme

- 46.1 This clause 46 applies if at the Date of this Contract, development of the Community Title Scheme has not completed.
- 46.2 Until the development of a Community Title Scheme is finished, the Developer warrants to the Buyer that the development will be carried out in accordance with the scheme.
- 46.3 Without limiting the damages recoverable for breach of the warranty in clause 46.2, the Buyer may recover damages for the loss of a reasonably expected capital appreciation of the Lot that would have resulted from completion of the development in accordance with the terms of the Community Title Scheme.

## 47. Incomplete development of Lot

- 47.1 This clause 47 applies if at the Date of this Contract, the Lot is to be developed or further developed in accordance with the Community Title Scheme. For clarity, this clause does not apply if an unconditional Compliance Certificate has issued before the Date of this Contract and the Seller gives to the Buyer evidence acceptable to the Registrar General that an unconditional Compliance Certificate has issued for the Lot, or if the Seller gives an unconditional Compliance Certificate to the Buyer on Completion.



- 47.2 The Buyer becomes bound to develop the Lot in accordance with the Community Title Scheme.
- 47.3 The Seller must give written notice of the proposed sale of the Lot to the Planning and Land Authority.
- 47.4 The Buyer must:
- 47.4.1 give to the Planning and Land Authority a written undertaking to develop the Lot in accordance with the Community Title Scheme (if a form is approved for an undertaking, the form must be used); and
  - 47.4.2 give the Planning and Land Authority any security required by the Planning and Land Authority, within 28 days after notice of the transaction was given to the Planning and Land Authority, for the development of the Lot in accordance with the Community Title Scheme.

#### 48. Required first or top sheet

- 48.1 The Seller must give to the Buyer, before the Buyer enters into this Contract, a Section 67 Statement.
- 48.2 The Section 67 Statement must:
- 48.2.1 state that the Lot is included in a Community Title Scheme that imposes obligations on the owner of the Lot;
  - 48.2.2 state the name and address of:
    - (a) the body corporate of the scheme; or
    - (b) if it is the duty of the Community Title Body Corporate manager to act for the Community Title Body Corporate in supplying Section 56 Certificates — the manager;
  - 48.2.3 state the amount of annual contributions currently fixed by the Community Title Body Corporate as payable by the owner of the Lot;
  - 48.2.4 identify improvements on common property of the scheme for which the owner of the Lot is responsible;
  - 48.2.5 be signed by the Seller or a person authorised by the Seller; and
  - 48.2.6 be substantially complete.
- 48.3 The Seller must attach to this Contract, as a first or top sheet, a copy of the Section 67 Statement given to the Buyer under clause 48.1.
- 48.4 The Buyer may rescind this Contract if:
- 48.4.1 the Seller has not complied with clauses 48.1 and 48.3; and
  - 48.4.2 Completion has not taken place.

#### 49. Notice to Community Title Body Corporate

- 49.1 The parties must comply with the rules and by-laws of the Community Title Body Corporate in relation to notification of the sale and purchase of the Lot.

#### 50. Section 56 Certificate

- 50.1 The Seller must give to the Buyer a Section 56 Certificate at least 7 days before Completion.
- 50.2 On Completion, the Buyer must pay to the Seller the fee charged for the Section 56 Certificate.

#### 51. Foreign Resident Withholding Tax

**Warning:** The questions in the Schedule regarding the Relevant Price and the Clearance Certificates are not binding, and are included to remind the parties of their obligations under the Withholding Law.

**Warning:** The following clauses 51.1 to 51.8 are subject to the Withholding Law, and do not encompass all obligations under the Withholding Law.

- 51.1 In this clause 51 the following words have the following meanings:

**CGT Asset** has the meaning in the *Income Tax Assessment Act 1997*;

**Clearance Certificate** means a certificate issued under section 14-220 of the Withholding Law that covers the date of Completion;

**Relevant Percentage** means the percentage amount stated in section 14-200(3)(a) and 14-205(4)(a) of the Withholding Law;

**Relevant Price** means the higher of:

- the Price (including GST); and
- the market value of the CGT Assets sold under this Contract;

as at the Date of this Contract;

**Variation Certificate** means a certificate issued under section 14-235 of the Withholding Law that covers the date of Completion;

**Withholding Amount** means, subject to clauses 51.6 and 51.7, the Relevant Percentage of the first element of the CGT Asset's cost base (for all CGT Assets sold under this Contract) as at the Date of this Contract; and

**Withholding Law** means Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* and associated provisions.

- 51.2 If the Relevant Price is less than the dollar amount stated in section 14-215(1)(a) of the Withholding

Law as at the Date of this Contract, the parties acknowledge that there are no obligations under the Withholding Law.

- 51.3 If Clearance Certificates for all the Sellers are provided to the Buyer prior to Completion, the parties acknowledge that there are no obligations under the Withholding Law.
- 51.4 If neither clauses 51.2 or 51.3 apply, then:
  - 51.4.1 the Seller must provide to the Buyer any information required to enable the Buyer to comply with clause 51.4.2(a), within 5 days of written request from the Buyer;
  - 51.4.2 the Buyer must:
    - (a) lodge a purchaser payment notification form with the ATO; and
    - (b) give evidence of compliance with clause 51.4.2(a) to the Seller;
      - no later than 5 days before the Date for Completion;
  - 51.4.3 the Seller irrevocably instructs the Buyer to draw as part of the Price, and the Buyer must draw and retain on Completion, an unendorsed bank cheque payable to the ATO for the Withholding Amount; and
  - 51.4.4 the parties must both, on the date of Completion, attend the offices of an authorised collection agent of the ATO to deposit the bank cheque referred to in clause 51.4.3 in payment of the Withholding Amount following Completion.
- 51.5 If clause 51.4 applies and the parties do not comply with clause 51.4.4:
  - 51.5.1 the Buyer indemnifies the Seller for any loss or damage resulting from the Buyer's delay in remitting and/or failure to remit the Withholding Amount to the ATO; and
  - 51.5.2 the Buyer charges the Property (for the benefit of the Seller) with the Buyer's obligations under this clause 51.5.
- 51.6 Where the Seller gives the Buyer a Variation Certificate prior to Completion, the Withholding Amount is the amount stated in the Variation Certificate.
- 51.7 Where Clearance Certificates for some but not all of the Sellers are provided to the Buyer prior to Completion, then the Withholding Amount is reduced by the same percentage as the percentage ownership of the Property of the Sellers that are subject to a Clearance Certificate.
- 51.8 Where a Clearance Certificate is provided by a Seller to the Buyer, the Seller warrants to the

Buyer that that Seller is the entity referred to in the Clearance Certificate and is the relevant taxpayer for capital gains tax payable on the sale of the CGT Assets sold under this Contract.

## 52. Deposit by Instalments

- 52.1 The following clauses 52.2 to 52.8 inclusive only apply if the 'Deposit by Instalments' option on the Schedule is selected.
- 52.2 Clauses 2.1, 2.2, 2.3 and 2.4 are deleted.
- 52.3 The Buyer must pay the Deposit to the Stakeholder. The Seller agrees to accept the payment of the Deposit in two instalments as follows:
  - 52.3.1 5% of the Price by cheque on the Date of this Contract (**First Instalment**); and
  - 52.3.2 the balance of the Deposit (if it has not already been paid) by unendorsed bank cheque on the Date for Completion (**Second Instalment**);
- and in every respect time is of the essence for payment of the First Instalment in this clause 52.3.1.
- 52.4 The Deposit becomes the Seller's property on Completion or on the earlier termination of this Contract by the Seller for the Buyer's default.
- 52.5 If the First Instalment of the Deposit is:
  - 52.5.1 not paid on time and in accordance with clause 52.3; or
  - 52.5.2 paid by cheque and the cheque is not honoured on first presentation,
- the Buyer is in default and the Seller may terminate this Contract immediately by written notice to the Buyer (without the notice otherwise necessary under clause 18) and clause 19 applies. If the Seller does not terminate this Contract in accordance with this clause 52.5, then this Contract remains on foot, subject to this clause 52.5, until either the Seller terminates the Contract pursuant to this clause 52.5, or waives the benefit of this clause 52.5 pursuant to clause 52.8.
- 52.6 If the Second Instalment of the Deposit is not paid on time in accordance with clause 52.3, then the Seller cannot immediately terminate the Contract for the Buyer's breach of an essential condition. The Seller must make timing of the payment of the Second Instalment an essential condition of the Contract by serving on the Buyer a Default Notice requiring the Buyer to pay the Second Instalment within 14\* days after service of the Default Notice (excluding the date of service).

\* Alter as necessary

- 52.7 For clarity, the Buyer must pay the full Price to the Seller, on or before Completion.
- 52.8 These clauses 52.2 to 52.8 inclusive are for the benefit of the Seller. The Seller may at any time before this Contract is terminated notify the Buyer in writing that the benefit of these clauses 52.2 to 52.8 inclusive is waived.

### 53. Residential Withholding Tax

**Warning:** The following clauses 53.1 to 53.9 are subject to the Withholding Law, and do not encompass all obligations under the Withholding Law.

- 53.1 In this clause 53 the following words have the following meanings:
- RW Amount** means the amount which the Buyer must pay under section 14-250 of the Withholding Law;
- RW Amount Information** means the completed RW Amount details referred to on page 3 of this Contract; and
- RW Percentage** means the percentage amount stated in section 14-250(6), (8) and (9) of the Withholding Law, as applicable to the supply of the Property from the Seller to the Buyer.
- 53.2 The Seller must provide the Buyer with the RW Amount Information no later than 7 days after the Date of this Contract.
- 53.3 If the 'Buyer required to make a withholding payment?' option on the Schedule is selected 'no' or if no selection is made, the Seller warrants to the Buyer that the Buyer is not required to make a payment under section 14-250 in relation to the supply of the Property from the Seller to the Buyer.
- 53.4 The following clauses 53.5 to 53.9 inclusive only apply if the 'Buyer required to make a withholding payment?' option on the Schedule is selected 'yes'.
- 53.5 Subject to any adjustments to the Price that may arise after the date that the RW Amount Information is provided in accordance with clause 53.2 and which affect the RW Amount, the Seller warrants to the Buyer on the date that the RW Amount Information is provided to the Buyer that the Seller has provided the Buyer with the information required under section 14-255 of the Withholding Law in relation to the supply of the Property from the Seller to the Buyer, and that this information is true and correct to the Seller's knowledge.
- 53.6 The Buyer must provide the Seller with a copy of the 'GST property settlement withholding notification online form' confirmation email (or emails, if applicable) issued to the Buyer by the ATO no later than:
- 53.6.1 21 days after a written request from the Seller; or
- 53.6.2 7 days prior to the Date for Completion, whichever is the earlier.
- 53.7 The Buyer must provide the Seller with evidence of submission by the Buyer to the ATO of the 'GST property settlement date confirmation online form', with such evidence to be provided prior to or on Completion.
- 53.8 The Seller irrevocably instructs the Buyer to draw as part of the Price, and the Buyer must draw and retain on Completion, an unendorsed bank cheque payable to the ATO for the RW Amount.
- 53.9 In relation to the unendorsed bank cheque required by clause 53.8, the Buyer must:
- 53.9.1 forward the unendorsed bank cheque to the ATO immediately after Completion; and
- 53.9.2 provide the Seller with evidence of payment of the RW Amount to the ATO.



## The Law Society of the Australian Capital Territory: Contract for Sale

### Annexure “A” — Finance Clause

<b>Lender</b>	
<b>Security Property</b>	
<b>Amount</b>	
<b>Date for Approval</b>	

- A1 This Contract is subject to the Lender specified in this Annexure unconditionally approving a mortgage loan (**Mortgage Loan**) of not less than the Amount on the security of the Security Property.
- A2 This Finance Clause is for the benefit of the Buyer. Immediately after the Date of this Contract (if the Buyer has not already done so) the Buyer must:
- A2.1 make an application to the Lender for the Mortgage Loan;
  - A2.2 diligently pursue that application;
  - A2.3 do all acts matters and things;
  - A2.4 pay any application fee; and
  - A2.5 supply all information, certificates and valuations,
- as required by the Lender to approve the Mortgage Loan by the Date for Approval. This clause is an essential term.
- A3 The Buyer may at any time before this Contract is rescinded notify the Seller that the benefit of this Finance Clause is waived.
- A4 The Buyer must notify the Seller in writing on or before the Date for Approval or any other date for approval agreed in writing by the parties whether the Mortgage Loan is approved or not, and
- A4.1 if approved, the Buyer will no longer have the benefit of this Finance Clause; or
  - A4.2 if not approved, the Seller may rescind or the Buyer may rescind provided that the Buyer is not in default under cl. A2.
- A5 If the Buyer does not give the notice under cl. A4 then the Seller may serve a Default Notice under cl. 18.6 and if the Buyer rectifies the default within the time specified in the Default Notice then cl. A4.1 or cl. A4.2 applies. If the Seller does not serve a Default Notice then this Contract remains on foot, subject to this Finance Clause, until either the Seller gives a Default Notice or the Buyer gives a notice under cl. A4, whichever occurs first.
- A6 If this Contract is rescinded pursuant to cl. A4.2 then the Buyer authorises the Stakeholder to deduct \$300.00 from the Deposit and pay that amount to the Seller to be applied towards any legal costs and disbursements incurred by the Seller. If a bank guarantee or security bond has been provided instead of a cash deposit then immediately after rescission the Buyer must pay \$300.00 to the Seller and until paid it is a debt due to the Seller and recoverable by the Seller from the Buyer.

