

## **Deed of Variation of Contract**

**Ballina Shire Council**  
**Calardu Ballina No.1 Pty Limited**  
**Harvey Norman Holdings Limited**

**Contract for Sale**  
**Lot 1, Boeing Avenue, Southern Cross Industrial Estate**  
**Ballina NSW**

**Allens Arthur Robinson**  
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# Deed of Variation of Contract

Allens Arthur Robinson

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## Deed of Variation of Contract

Allens Arthur Robinson 

<b>Date</b>	30 April 2010
<b>Parties</b>	
1.	Ballina Shire Council of Corner of Tamar and Cherry Streets, Ballina NSW 2478 (the <i>Vendor</i> )
2.	Calardu Ballina No.1 Pty Limited (ACN 128 946 261) of A1 Richmond Road, Homebush West, NSW 2140 (the <i>Purchaser</i> )
3.	Harvey Norman Holdings Limited (ACN 003 237 545) of A1 Richmond Road, Homebush West, NSW 2140 (the <i>Guarantor</i> )
<b>Recitals</b>	
A	The Vendor and Purchaser have entered into the Contract.
B	The Guarantor has guaranteed the obligations of the Purchaser under the Contract.
C	The Vendor and Purchaser have agreed to vary the Contract as set out in this Deed.
D	The Guarantor has agreed to the variation of the Contract as set out in this Deed.

**It is agreed** as follows.

## 1. Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Contract** means the contract for sale of land dated 16 July 2008 between the Vendor as vendor and the Purchaser as purchaser for the sale of the Property.

**Guarantee** means the deed of guarantee between the Guarantor and the Vendor dated 16 July 2008.

**Property** means the property located at Lot 1, Boeing Avenue, Southern Cross Industrial Estate, Ballina, New South Wales, being part of the land comprised in folio identifiers 1/237752 and 87/1118585.

# Deed of Variation of Contract

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## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) the *singular* includes the plural and conversely;
- (b) a *gender* includes all genders;
- (c) where a *word* or *phrase* is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to any *party* to this Deed or any other agreement or document includes the party's successors and substitutes or assigns;
- (e) a reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them;
- (f) *clause* or *schedule* means a clause of or schedule to this Deed;
- (g) a reference to any *agreement* or *document* is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed;
- (h) A reference to any *legislation* or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (i) a reference to a *right* or *obligation* of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) unless stated otherwise, *one provision* does not limit the effect of another;
- (k) a reference to *conduct* includes, without limitation, any omission, statement or undertaking, whether or not in writing.

## 2. Variation

The Vendor and Purchaser agree that from the date of this Deed the Contract is varied as set out in the Schedule.

## 3. Acknowledgment by Guarantor

The Guarantor acknowledges and agrees to the variation of the Contract as set out in the Schedule.

## 4. Notices

Any notice given under this Deed may be given in any manner permitted by the Contract.

## Deed of Variation of Contract

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### 5. Entire Agreement

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This Deed, the Contract and the Guarantee contains the entire agreement of the parties with respect to their subject matter. They set out the only conduct relied on by the parties and supersede all earlier conduct by the parties with respect to its subject matter.

### 6. Assignment

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The rights and obligations of each party under this Deed are personal. They cannot be assigned, charged or otherwise dealt with, and no party shall attempt or purport to do so, without the prior written consent of all the parties.

### 7. Stamp Duty and Costs

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Each party shall bear its own costs arising out of the preparation of this Deed. The Purchaser shall pay any stamp duty (including fines and penalties) chargeable on this Deed. The Purchaser shall indemnify the Vendor on demand against any liability for that stamp duty.

### 8. Further Assurances

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Each party shall take all steps, execute all documents and do everything reasonably required by any other party to give effect to any of the transactions contemplated by this Deed.

### 9. Counterparts

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This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

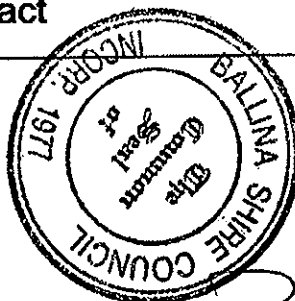
Executed and delivered as a deed in New South Wales

# Deed of Variation of Contract

Allens Arthur Robinson

## EXECUTION BY THE VENDOR

Signed Sealed and Delivered by Ballina Shire Council in the presence of:



*[Signature of Cr Phillip Silver]*

Witness Signature

*Cr Phillip Silver Mayor*

Print Name

Signature

*Paul Hickey*  
General Manager

## EXECUTION BY THE PURCHASER

Executed as a deed in accordance with section 127 of the Corporations Act 2001 by Calardu Ballina No.1 Pty Limited:

*[Signature of John Evyn Slack-Smith]*

Director Signature

JOHN EYVN SLACKSMITH

Print Name

*[Signature of Chris Mentis]*

Director/Secretary Signature

CHRIS MENTIS

Print Name

## EXECUTION BY THE GUARANTOR

Executed as a deed in accordance with section 127 of the Corporations Act 2001 by Harvey Norman Holdings Limited:

*[Signature of John Evyn Slack-Smith]*

Director Signature

JOHN EYVN SLACK-SMITH

Print Name

*[Signature of Chris Mentis]*

Director/Secretary Signature

CHRIS MENTIS

Print Name

# Deed of Variation of Contract

Allens Arthur Robinson 

## Schedule

### Amendments to the Contract

The Contract is varied as follows.

1. Amend the cover page of the Contract by:
  - (a) replacing the Price of "\$6,156,000 (subject to clause 35)" with "\$6,026,000", and
  - (b) replacing the Balance of "\$5,848,200 (subject to clause 35)" with "\$5,718,200".
2. In clause 30.1, the definition of "Purchase Price" is amended to read: "**Purchase Price** means the price payable for the Property under this Contract, being the amount specified on the cover page of this Contract."
3. Replace the Subdivision Plan attached as Annexure B of the Contract with the Subdivision Plan attached to this Deed as Annexure A.
4. Clause 33.1(b) is deleted and replaced with "not used".
5. Clause 33.2(a) is amended to read: "The Conditions Precedent in clause 33.1(c) are for the sole benefit of and may only be waived by the Vendor in writing in its absolute discretion."
6. Clause 33.3(b) is amended to read: "The Purchaser must promptly take all steps reasonably necessary and within its control to procure that the Conditions Precedent in clause 33.1(c) is fulfilled."
7. Clause 33.4(b) is deleted.
8. Amend clause 33.6 by:
  - (a) deleting clause 33.6(c)(i) and replacing it with "not used"; and
  - (b) deleting clause 33.6(e)(i) and replacing it with "not used".
9. Delete the words "the conditions of the Purchaser's Development Consent or" in clause 33.7.
10. Clause 35 is deleted.
11. In the Option Deed attached as Annexure D of the Contract:
  - (a) the definition of "Previous Sale Contract" in clause 1.1 is amended to read: "**Previous Sale Contract** means the contract for the sale of the Property between the Purchaser as vendor, and the Vendor, as purchaser dated 16 July 2008, as varied."; and
  - (b) the definition of "Previous Sale Contract" in clause 30.1 of the contract attached to the Option Deed as Annexure B is amended to read: "**Previous Sale Contract** means the contract for the sale of the Property between the Purchaser as vendor, and the Vendor, as purchaser dated 16 July 2008, as varied."
12. The section 88B Instrument attached as Annexure H to the Contract is replaced with the section 88B Instrument attached as Annexure B to this Deed.

## **Deed of Variation of Contract**

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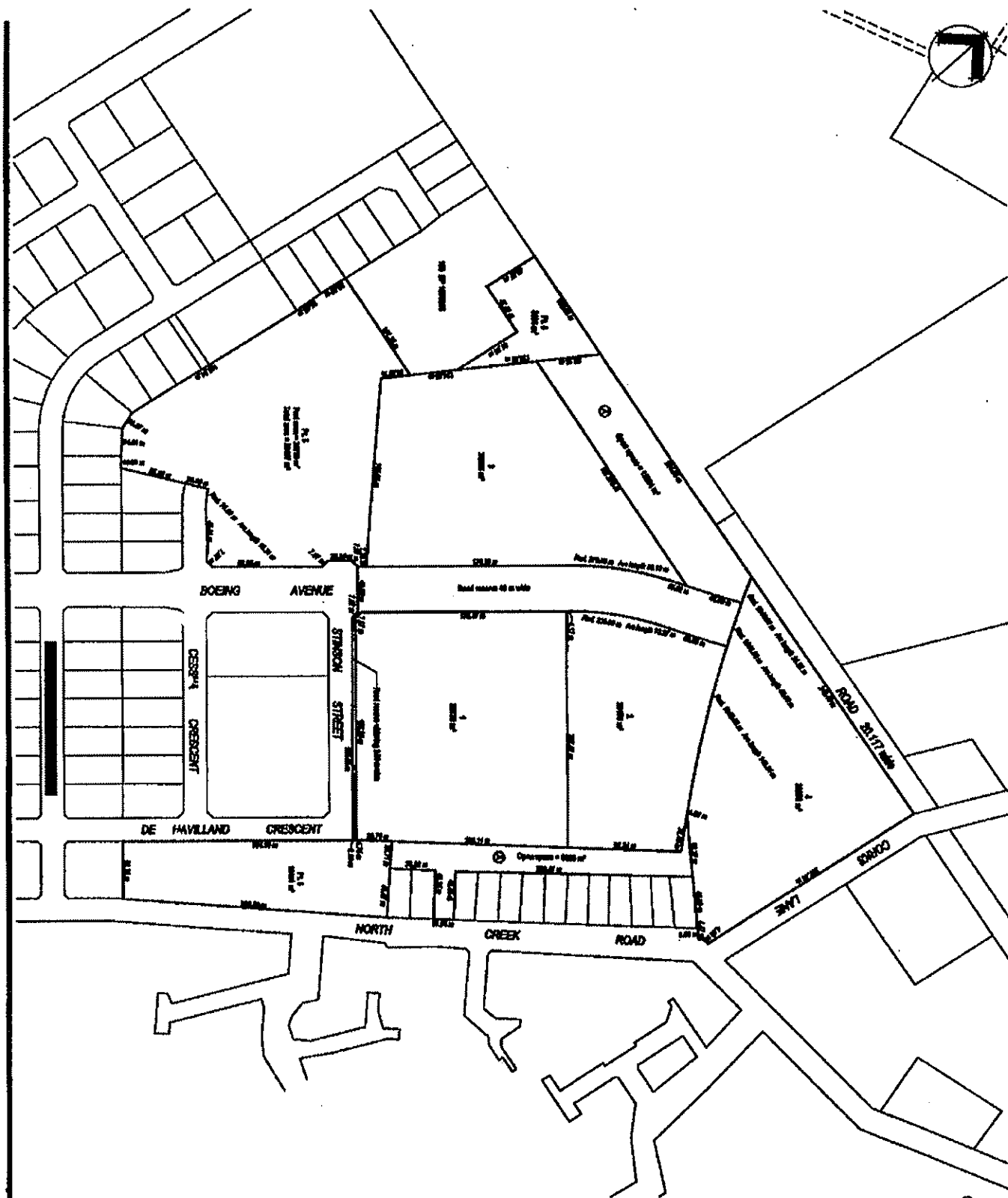
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### **Annexure A**

### **Subdivision Plan**

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① Open space to be dedicated by public authority  
 Note: All areas and dimensions are approximate only  
 and are subject to field verification.

RC

**GeoLINK**  
 Geospatial Information Systems

Southern Cross Industrial Estate



Final L&P layout

12/31/26

# **Deed of Variation of Contract**

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## **Annexure B**

### **Section 88B Instrument**

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**INSTRUMENT SETTING OUT TERMS OF EASEMENTS INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919**

Lengths are in metres

(Sheet 1 of 2 Sheets)

Plan:

Plan of Subdivision of Lot 1 DP 237752 and Lot 87 of DP 1118585

Full name and address of  
Proprietor of the land:

Ballina Shire Council  
Corner Tamar and Cherry Streets  
Ballina NSW 2478

**PART 1 (Creation)**

Number of item shown in the intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan	Burdened (lots) or parcel(s)	Benefited lot(s), Road(s), bodies or Prescribed Authorities.
[*]	Restrictions on Use	Lot 1	Ballina Shire Council
[*]	Easement for Services 5 wide unlimited in depth and height as shown on the plan [*]	Lot 1	Ballina Shire Council

**Part 2 (Terms)**

**1. Terms of Restrictions on Use Firstly referred to in the abovementioned Plan:**

- (a) No building including any outbuilding shall be erected on any lot having exterior walls constructed of plain sheeting of metal, fibro or like materials and the materials used for the exterior walls shall have a low reflective index except with the express written consent of Ballina Shire Council.
- (b) No building erected on any lot shall have a roof with a greater pitch than 3.5 degrees of metal or other material which does not have a low reflective index without the written consent of Ballina Shire Council.
- (c) No dividing fence shall be erected on any lot to divide it from any adjoining lot owned by Ballina Shire Council without the written consent of the said Council but such consent shall not be withheld if such fence shall be erected without expense to the said Council and in favour of any person dealing with the owner for the time being of such lot consent shall be deemed to have been given in respect of any such fence for the time being erected and upon transfer of such adjoining land by the said Council this restriction shall be absolutely void.
- (d) No person shall erect or cause or permit to be erected upon the subject land or any part thereof any advertisement, hoarding or similar structure and shall not permit the subject land or any part thereof to be used for the display of any advertisements or notice until such land has a building erected thereon without the express written consent of Ballina Shire Council.



(Sheet 2 of 2 Sheets)

Plan:

Plan of Subdivision of Lot 1 DP 237752 and Lot 87  
of DP 1118585.

Name of person or authority empowered to Release. Vary or Modify the Restrictions on Use referred to in  
abovementioned Plan

Ballina Shire Council

**2. Terms of Easement for Services Secondly referred to in the abovementioned Plan:**

(a) Ballina Shire Council may:

- (i) provide utility services supplied through the lot burdened, but only within the site of this easement, and
- (ii) do anything reasonably necessary for that purpose, including:
  - (A) entering the lot burdened;
  - (B) taking anything onto the lot burdened; and
  - (C) carrying out any work, such as constructing, placing, repairing, maintaining and replacing pipes, poles, wires, cables, conduits, structures and equipment;

(b) In exercising those powers, Ballina Shire Council, the body having the benefit of this easement must:

- (i) ensure all work is done properly;
- (ii) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened;
- (iii) cause as little damage as is practicable to the lot burdened and any improvement on it;
- (iv) restore the lot burdened as nearly as is practicable to its former condition; and
- (v) make good any collateral damage.

(c) For the purposes of this Easement for Services, "utility services" includes but is not limited to supply of water, gas, electricity, telephone and television and discharge of sewage, sullage and other fluid wastes.

Name of person or authority empowered to Release. Vary or Modify the Easement for Services referred to in  
abovementioned Plan

Ballina Shire Council

The Common Seal of Ballina  
Shire Council was hereto affixed  
pursuant to a resolution of the Council

)  
)  
)

.....  
Paul Hickey  
General Manager

.....  
Phillip Silver  
Mayor



# Contract for the sale of land – 2005 edition

## TERM

## MEANING OF TERM

Vendor's agent

NIL

Co-agent

Vendor

**BALLINA SHIRE COUNCIL**

Corner of Tamar and Cherry Streets, Ballina NSW 2478

Vendor's Solicitor

**ALLENS ARTHUR ROBINSON**

**DX 105 SYDNEY**

**126 Phillip Street, Sydney NSW 2000**

**FAX: 61 2 9230 5333**

**REF: Nicholas Cowie**

**Tel: 9230 4025**

**Email: Nicholas.Cowie@aar.com.au**

**Sonya Oberekar**

**Tel: 9230 4740**

**Email: Sonya.Oberekar@aar.com.au**

Completion Date

**See clause 30.1**

Land

**Lot 1, Boeing Avenue, Southern Cross Industrial Estate, Ballina**

(Address, plan details and title reference)

**Part of Folio Identifiers 1/237752 and 87/1118585 being Lot 1 in the Subdivision Plan**

☒ VACANT POSSESSION ☐ subject to existing tenancies

Improvements

☐ HOUSE ☐ garage ☐ carport ☐ home unit ☐ carspace ☐ none

☒ other: **Vacant Land**

Attached copies

☐ Documents in the List of Documents as marked or as numbered:

☐ Other documents:

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

Inclusions

☐ blinds ☐ curtains ☐ insect screens ☐ stove  
☐ built-in wardrobes ☐ dishwasher ☐ light fittings ☐ pool equipment  
☐ clothes line ☐ fixed floor coverings ☐ range hood ☐ TV antenna  
☐ other: **NIL**

Exclusions

**Nil**

Purchaser

**CALARDU BALLINA NO.1 PTY LIMITED**

**ACN 128 946 261**

**Harvey Norman Holdings Limited**

**A1 Richmond Road, Homebush West, NSW 2140**

Purchaser's solicitor

**WATKINS TAPSELL**

**DX 4512 SUTHERLAND**

**161 Oak Road, Kirrawee NSW 2232**

**TEL: 61 2 9521 6000**

**REF: Peter Rusbourne**

**FAX: 61 2 9521 4168**

**Email: Peter.Rusbourne@watkinsapsell.com.au**

Price

**\$6,156,000 (subject to clause 35)**

Deposit

**\$ 307,800**

**(5% of the price, unless otherwise stated)**

Balance

**\$5,848,200 (subject to clause 35)**

Contract date

**16th JULY, 2008**

**(if not stated, the date this contract was made)**

**See Annexure A**

**Vendor**

**Witness**

**See Annexure A**

**Purchaser**

**Witness**

☐ JOINT TENANTS ☐ tenants in common ☐ in unequal shares

**Tax information (the parties promise this is correct as far as each party is aware)**

**GST AMOUNT** (optional): **GST AMOUNT** (optional) The price includes GST of: \$

**Vendor duty** is payable

☒ NO

☐ yes in full

☐ yes to an extent

**Deposit** can be used to pay vendor duty

☒ NO

☐ yes

**Land tax** is adjustable

☐ NO

☒ yes

**GST:** Taxable supply

☐ NO

☒ yes in full

☐ yes to an extent

Margin scheme will be used in making the taxable supply

☒ NO

☐ yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

☐ not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))

☐ by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))

☐ GST-free because the sale is the supply of a going concern under section 38-325

☐ GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O

☐ input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address and telephone number**

## List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land <input checked="" type="checkbox"/> 2 plan of the land <input type="checkbox"/> 3 unregistered plan of the land <input type="checkbox"/> 4 plan of land to be subdivided <input type="checkbox"/> 5 document that is to be lodged with a relevant plan <input checked="" type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979) <input checked="" type="checkbox"/> 7 section 149(5) information included in that certificate <input type="checkbox"/> 8 sewerage connections diagram <input checked="" type="checkbox"/> 9 sewer mains diagram/letter <input type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract <input type="checkbox"/> 11 section 88G certificate (positive covenant) <input type="checkbox"/> 12 survey report <input type="checkbox"/> 13 section 317A certificate (certificate of compliance) <input type="checkbox"/> 14 building certificate given under <i>legislation</i> <input type="checkbox"/> 15 insurance certificate (Home Building Act 1989) <input type="checkbox"/> 16 brochure or note (Home Building Act 1989) <input type="checkbox"/> 17 section 24 certificate (Swimming Pools Act 1982) <input type="checkbox"/> 18 lease (with every relevant memorandum or variation) <input type="checkbox"/> 19 other document relevant to tenancies <input type="checkbox"/> 20 old system document <input type="checkbox"/> 21 Crown tenure card <input type="checkbox"/> 22 Crown purchase statement of account <input type="checkbox"/> 23 Statutory declaration regarding <i>vendor duty</i>	<input type="checkbox"/> 24 property certificate for strata common property <input type="checkbox"/> 25 plan creating strata common property <input type="checkbox"/> 26 strata by-laws not set out in <i>legislation</i> <input type="checkbox"/> 27 strata development contract or statement <input type="checkbox"/> 28 strata management statement <input type="checkbox"/> 29 leasehold strata - lease of lot and common property <input type="checkbox"/> 30 property certificate for neighbourhood property <input type="checkbox"/> 31 plan creating neighbourhood property <input type="checkbox"/> 32 neighbourhood development contract <input type="checkbox"/> 33 neighbourhood management statement <input type="checkbox"/> 34 property certificate for precinct property <input type="checkbox"/> 35 plan creating precinct property <input type="checkbox"/> 36 precinct development contract <input type="checkbox"/> 37 precinct management statement <input type="checkbox"/> 38 property certificate for community property <input type="checkbox"/> 39 plan creating community property <input type="checkbox"/> 40 community development contract <input type="checkbox"/> 41 community management statement <input type="checkbox"/> 42 document disclosing a change of by-laws <input type="checkbox"/> 43 document disclosing a change in a development or management contract or statement <input type="checkbox"/> 44 document disclosing a change in boundaries <input type="checkbox"/> 45 certificate under Management Act – section 109 (Strata Schemes) or section 26 (Community Land)

## WARNINGS

- Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving
 

AGL Gas Networks Limited	Government Business & Government Procurement	Public Works Dept
Council	Heritage Office	Roads & Traffic Authority
County Council	Infrastructure Planning and Natural Resources	Rural Lands Protection Board
East Australian Pipeline Limited	Land & Housing Corporation	Sustainable Energy Development
Education & Training Dept	Mine Subsidence Board	Telecommunications authority
Electricity authority	Owner of adjoining land	Water, sewerage or drainage authority
Environment & Conservation Dept	Primary Industries Department	
Fair Trading	RailCorp	

If you think that any of these matters affects the property, tell your solicitor.

A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 1987 or the Retail Leases Act 1994.
- If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
- If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
- The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- The purchaser will usually have to pay stamp duty on this contract. The sale will also usually be a vendor duty transaction. If duty is not paid on time, a party may incur penalties.
- If the purchaser agrees to the release of deposit any rights in relation to the land (for example, the rights mentioned in clause 2.8) may be subject to the rights of other persons such as the vendor's mortgagee.
- The purchaser should arrange insurance as appropriate.

## DISPUTES

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example mediation under the Law Society Mediation Guidelines).

## AUCTIONS

Regulations made under the Property Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

### IMPORTANT NOTICE TO VENDORS AND PURCHASERS

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

For example, as purchaser you should be satisfied that finance will be available at the time of completing the purchase (even if settlement might occur many months after signing this contract - in particular, if you are buying off the plan).

### COOLING OFF PERIOD (PURCHASER'S RIGHTS)

1. This is the statement required by section 66X of the Conveyancing Act 1919 and applies to a contract for the sale of residential property.
2. The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.
3. There is **NO COOLING OFF PERIOD**:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act; or
  - (b) if the property is sold by public auction; or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in; or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

The vendor sells and the purchaser buys the *property* for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any *legislation* that cannot be excluded.

#### 1 Definitions (a term in *italics* is a defined term)

In this contract, these terms (in any form) mean -

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	a bank as defined in the Banking Act 1959, the Reserve Bank or a State bank;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's <i>solicitor</i> );
<i>document of title</i>	document relevant to the title or the passing of title;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in section 4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other <i>party</i> ;
<i>settlement cheque</i>	an unendorsed <i>cheque</i> made payable to the person to be paid and drawn on its own funds by - <ul style="list-style-type: none"> <li>● a <i>bank</i>; or</li> <li>● a building society, credit union or other FCA institution as defined in Cheques Act 1986; that carries on business in Australia; or</li> </ul> if authorised in writing by the vendor or the vendor's <i>solicitor</i> , some other <i>cheque</i> ;
<i>solicitor</i>	in relation to a <i>party</i> , the <i>party's</i> solicitor or licensed conveyancer named in this contract or in a notice <i>served</i> by the <i>party</i> ;
<i>terminate</i>	terminate this contract for breach;
<i>vendor duty</i>	vendor duty imposed under Chapter 4 of the Duties Act 1997;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the <i>property</i> or any adjoining footpath or road.

#### 2 Deposit and other payments before completion

- 2.1 The purchaser must pay the deposit to the *depositholder* as stakeholder.
- 2.2 *Normally*, the purchaser must pay the deposit on the making of this contract, and this time is essential.
- 2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.



- 2.4 The purchaser can pay any of the deposit only by unconditionally giving cash (up to \$2,000) or a *cheque* to the *depositholder* or to the vendor, vendor's agent or vendor's *solicitor* for sending to the *depositholder*.
- 2.5 If any of the deposit is not paid on time or a *cheque* for any of the deposit is not honoured on presentation, the vendor can *terminate*. This right to *terminate* is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 and 3 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 and 3 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until *termination* by the vendor or completion, subject to any existing right.
- 2.9 If each *party* tells the *depositholder* that the deposit is to be invested, the *depositholder* is to invest the deposit (at the risk of the *party* who becomes entitled to it) with a *bank*, credit union or permanent building society, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the *parties* equally, after deduction of all proper government taxes and financial institution charges and other charges.

### 3 Payment of vendor duty out of the deposit

- 3.1 This clause applies only if this contract says the deposit can be used to pay vendor duty.
- 3.2 If the amount held by the *depositholder* (disregarding the value of any bond or guarantee) exceeds the amount of *vendor duty*, the *parties* direct the *depositholder* to release the amount of *vendor duty* on the following terms -
- 3.2.1 the *depositholder* is to draw a *cheque* ("the vendor duty cheque") in favour of the Office of State Revenue and in a form acceptable to the Office of State Revenue for payment of *vendor duty*;
- 3.2.2 the *depositholder* is not to draw that *cheque* earlier than 14 days before the completion date; and
- 3.2.3 the receipt of a letter from the vendor's *solicitor* requesting the vendor duty cheque will be sufficient authority for the *depositholder* to draw and release that cheque.
- 3.3 The vendor's *solicitor* will use the vendor duty cheque for the sole purpose of payment of the *vendor duty* relating to this transaction.
- 3.4 If this contract is not completed in circumstances that there is, or may be, no liability for *vendor duty* -
- 3.4.1 if the vendor duty cheque has been forwarded to the vendor's *solicitor* but has not been used to pay *vendor duty*, that cheque must be returned immediately to the *depositholder* for cancellation;
- 3.4.2 if the vendor duty cheque has been used to pay *vendor duty* -
- the amount of *vendor duty* is repayable upon demand;
  - the vendor must lodge an application for refund of *vendor duty*; and
  - the vendor irrevocably authorises the Office of State Revenue to pay to the *depositholder* the refund of *vendor duty*;
- 3.4.3 each *party* must do whatever else is necessary to ensure that the *party* whose funds were used to pay *vendor duty* receives the refund; and
- 3.4.4 rights under this clause continue even if the contract has been *rescinded* or *terminated*.

### 4 Transfer

- 4.1 *Normally*, the purchaser must *serve* the form of transfer at least 14 days before the completion date.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must *serve* it.
- 4.3 If the purchaser *serves* a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.
- 4.5 If this sale is exempt from *vendor duty* -
- 4.5.1 the vendor can (but does not have to) *serve* an application for exemption from *vendor duty* in the form satisfactory to the Office of State Revenue *within* 7 days after the contract date;
- 4.5.2 if that application is attached to this contract or has been provided to the purchaser before the contract date, the application is *served* on the contract date; and
- 4.5.3 if the vendor complies with clause 4.5.1 -
- the purchaser must have the form of transfer marked by the Office of State Revenue in relation to *vendor duty* before *serving* the form of transfer; and
  - on completion the vendor must pay to the purchaser \$33.

### 5 Requisitions

- If the purchaser is or becomes entitled to make a *requisition*, the purchaser can make it only by *serving* it -
- 5.1 if it arises out of this contract or it is a general question about the *property* or title - *within* 21 days after the contract date;
- 5.2 if it arises out of anything *served* by the vendor - *within* 21 days after the later of the contract date and that *service*; and
- 5.3 in any other case - *within* a reasonable time.

### 6 Error or misdescription

- 6.1 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the *property*, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.

## 7 Claims by purchaser

The purchaser can make a claim (including a claim under clause 6) before completion only by *serving* it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion -

7.1 the vendor can *rescind* if in the case of claims that are not claims for delay -

7.1.1 the total amount claimed exceeds 5% of the price;

7.1.2 the vendor *serves* notice of intention to *rescind*; and

7.1.3 the purchaser does not *serve* notice waiving the claims *within* 14 days after that *service*; and

7.2 if the vendor does not *rescind*, the *parties* must complete and if this contract is completed -

7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the *depositholder* until the claims are finalised or lapse;

7.2.2 the amount held is to be invested in accordance with clause 2.9;

7.2.3 the claims must be finalised by an arbitrator appointed by the *parties* or, if an appointment is not made *within* 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a *party* (in the latter case the *parties* are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);

7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;

7.2.5 net interest on the amount held must be paid to the *parties* in the same proportion as the amount held; and

7.2.6 if the *parties* do not appoint an arbitrator and neither *party* requests the President to appoint an arbitrator *within* 3 months after completion, the claims lapse.

### Vendor's right to rescind

The vendor can *rescind* if -

8.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a *requisition*;

8.2 the vendor *serves* a notice of intention to *rescind* that specifies the *requisition* and those grounds; and

8.3 the purchaser does not *serve* a notice waiving the *requisition within* 14 days after that *service*.

## 9 Purchaser's default

If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can *terminate* by *serving* a notice. After the *termination* the vendor can -

9.1 keep or recover the deposit (to a maximum of 10% of the price);

9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause-

9.2.1 for 12 months after the *termination*; or

9.2.2 if the vendor commences proceedings under this clause *within* 12 months, until those proceedings are concluded; and

9.3 sue the purchaser either -

9.3.1 where the vendor has resold the *property* under a contract made *within* 12 months after the *termination*, to recover -

- the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and

- the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or

9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

10.1 The purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -

10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;

10.1.2 a service for the *property* being a joint service or passing through another property, or any service for another property passing through the *property* ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);

10.1.3 a wall being or not being a party wall in any sense of that term or the *property* being affected by an easement for support or not having the benefit of an easement for support;

10.1.4 any change in the *property* due to fair wear and tear before completion;

10.1.5 a promise, representation or statement about this contract, the *property* or the title, not set out or referred to in this contract;

10.1.6 a condition, exception, reservation or restriction in a Crown grant;

10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;

10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or

10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage or writ).

10.2 The purchaser cannot *rescind* or *terminate* only because of a defect in title to or quality of the inclusions.

10.3 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).

## 11 Compliance with work orders

- 11.1 *Normally*, the vendor must by completion comply with a *work order* made on or before the contract date and if this contract is completed the purchaser must comply with any other *work order*.
- 11.2 If the purchaser complies with a *work order*, and this contract is *rescinded* or *terminated*, the vendor must pay the expense of compliance to the purchaser.

## 12 Certificates and inspections

- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant -
- 12.1 to have the *property* inspected to obtain any certificate or report reasonably required;
- 12.2 to apply (if necessary in the name of the vendor) for -
- 12.2.1 any certificate that can be given in respect of the *property* under *legislation*; or
- 12.2.2 a copy of any approval, certificate, consent, direction, notice or order in respect of the *property* given under *legislation*, even if given after the contract date; and
- 12.3 to make 1 inspection of the *property* in the 3 days before a time appointed for completion.

## 13 Goods and services tax (GST)

- 13.1 In this clause, enterprise, input tax credit, margin scheme, supply of a going concern, tax invoice and taxable supply have the same meanings as in the *GST Act*.
- 13.2 *Normally*, if a *party* must pay the price or any other amount to the other *party* under this contract, GST is not to be added to the price or amount.
- 13.3 If under this contract a *party* must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example, under clauses 14 or 20.7) -
- 13.3.1 the *party* must adjust or pay on completion any GST added to or included in the amount; but
- 13.3.2 if this contract says this sale is a taxable supply, and payment would entitle the *party* to 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 is or was entitled and adding the *GST rate*.
- 13.4 If this contract says this sale is the supply of a going concern -
- 13.4.1 the *parties* agree the supply of the *property* is a supply of a going concern;
- 13.4.2 the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3 if the purchaser is not registered by the completion date, the *parties* must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the *GST rate* ("the retention sum"). The retention sum is to be held by the *depositholder* and dealt with as follows:
- if *within* 3 months of completion the purchaser *serves* a letter from the Australian Taxation Office stating the purchaser is registered, the *depositholder* is to pay the retention sum to the purchaser; but
  - if the purchaser does not *serve* that letter *within* 3 months of completion, the *depositholder* is to pay the retention sum to the vendor; and
- 13.4.4 if the vendor, despite clause 13.4.1, *serves* a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5 *Normally*, the vendor promises the margin scheme will not apply to the supply of the *property*.
- 13.6 If this contract says the margin scheme is to apply in making the taxable supply, the parties agree that the margin scheme is to apply to the sale of the *property*.
- 13.7 If this contract says the sale is not a taxable supply -
- 13.7.1 the purchaser promises that the *property* will not be used and represents that the purchaser does not intend the *property* (or any part of the *property*) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2 the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the *GST rate* if this sale is a taxable supply to any extent because of -
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8 If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the *property*, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if -
- 13.8.1 this sale is not a taxable supply in full; or
- 13.8.2 the margin scheme applies to the *property* (or any part of the *property*).
- 13.9 If this contract says this sale is a taxable supply to an extent -
- 13.9.1 clause 13.7.1 does not apply to any part of the *property* which is identified as being a taxable supply; and
- 13.9.2 the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the *property* to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10 *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11 The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.

**14 Adjustments**

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The *parties* must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under *legislation*, the *parties* must on completion adjust the reduced amount.
- 14.4 The *parties* must adjust land tax for the year current at the *adjustment date* -
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
  - 14.4.2 by adjusting the amount that would have been payable if at the start of the year -
    - the person who owned the land owned no other land;
    - the land was not subject to a special trust or owned by a non-concessional company; and
    - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the *parties* must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so -
- 14.6.1 the amount is to be treated as if it were paid; and
  - 14.6.2 the *cheque* must be forwarded to the payee immediately after completion (by the purchaser if the *cheque* relates only to the *property* or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the *property* or any adjoining footpath or road.

**15 Completion date**

The *parties* must complete by the completion date and, if they do not, a *party* can serve a notice to complete if that *party* is otherwise entitled to do so.

**16 Completion****● Vendor**

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the *property*.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the *property* (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the *property* does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser, plus another 20% of that fee.
- 16.6 If the purchaser *serves* a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.

**● Purchaser**

- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque*, the price (less any deposit paid) and any other amount payable by the purchaser under this contract (less any amount payable by the vendor to the purchaser under this contract).
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.

**● Place for completion**

- 16.11 *Normally*, the *parties* must complete at the completion address, which is -
- 16.11.1 if a special completion address is stated in this contract - that address; or
  - 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
  - 16.11.3 in any other case - the vendor's *solicitor's* address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

**17 Possession**

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the *property* on completion.
- 17.2 The vendor does not have to give vacant possession if -

- 17.2.1 this contract says that the sale is subject to existing tenancies; and
- 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 Normally, the purchaser can claim compensation (before or after completion) or *rescind* if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).

## 18 Possession before completion

- 18.1 This clause applies only if the vendor gives the purchaser possession of the *property* before completion.
- 18.2 The purchaser must not before completion -
  - 18.2.1 let or part with possession of any of the *property*;
  - 18.2.2 make any change or structural alteration or addition to the *property*; or
  - 18.2.3 contravene any agreement between the *parties* or any direction, document, *legislation*, notice or order affecting the *property*.
- 18.3 The purchaser must until completion -
  - 18.3.1 keep the *property* in good condition and repair having regard to its condition at the giving of possession; and
  - 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the *property* passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor -
  - 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and
  - 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate mentioned in Schedule J of the Supreme Court Rules 1970.
- 18.6 If this contract is *rescinded* or *terminated* the purchaser must immediately vacate the *property*.
- 18.7 If the *parties* or their *solicitors* on their behalf do not agree in writing to a fee or rent, none is payable.

## 19 Rescission of contract

- 19.1 If this contract expressly gives a *party* a right to *rescind*, the *party* can exercise the right -
  - 19.1.1 only by *serving* a notice before completion; and
  - 19.1.2 in spite of any making of a claim or *requisition*, any attempt to satisfy a claim or *requisition*, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 Normally, if a *party* exercises a right to *rescind* expressly given by this contract or any *legislation* -
  - 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;
  - 19.2.2 a *party* can claim for a reasonable adjustment if the purchaser has been in possession;
  - 19.2.3 a *party* can claim for damages, costs or expenses arising out of a breach of this contract; and
  - 19.2.4 a *party* will not otherwise be liable to pay the other *party* any damages, costs or expenses.

## 20 Miscellaneous

- 20.1 The *parties* acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.
- 20.2 Anything attached to this contract is part of this contract.
- 20.3 An area, bearing or dimension in this contract is only approximate.
- 20.4 If a *party* consists of 2 or more persons, this contract benefits and binds them separately and together.
- 20.5 A *party's solicitor* can receive any amount payable to the *party* under this contract or direct in writing that it is to be paid to another person.
- 20.6 A document under or relating to this contract is -
  - 20.6.1 signed by a *party* if it is signed by the *party* or the *party's solicitor* (apart from a direction under clause 4.3);
  - 20.6.2 *served* if it is *served* by the *party* or the *party's solicitor*;
  - 20.6.3 *served* if it is *served* on the *party's solicitor*, even if the *party* has died or any of them has died;
  - 20.6.4 *served* if it is *served* in any manner provided in s170 of the Conveyancing Act 1919;
  - 20.6.5 *served* if it is sent by fax to the *party's solicitor*, unless it is not received;
  - 20.6.6 *served* on a person if it (or a copy of it) comes into the possession of the person; and
  - 20.6.7 *served* at the earliest time it is *served*, if it is *served* more than once.
- 20.7 An obligation to pay an expense of another *party* of doing something is an obligation to pay -
  - 20.7.1 if the *party* does the thing personally - the reasonable cost of getting someone else to do it; or
  - 20.7.2 if the *party* pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, and 17 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any *legislation* includes a reference to any corresponding later *legislation*.
- 20.12 Each *party* must do whatever is necessary after completion to carry out the *party's* obligations under this contract.
- 20.13 Neither taking possession nor *serving* a transfer of itself implies acceptance of the *property* or the title.
- 20.14 The details and information provided in this contract (for example, on page 1) are, to the extent of each *party's* knowledge, true, and are part of this contract.
- 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.

## 21 Time limits in these provisions

- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2 (deposit).
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.
- 22 Foreign Acquisitions and Takeovers Act 1975**
- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.
- 23 Strata or community title**
- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract -  
 'change', in relation to a scheme, means -  
 ● a registered or registrable change from by-laws set out in this contract or set out in *legislation* and specified in this contract;  
 ● a change from a development or management contract or statement set out in this contract; or  
 ● a change in the boundaries of common property;  
 'common property' includes association property for the scheme or any higher scheme;  
 'contribution' includes an amount payable under a by-law;  
 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;  
 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;  
 'the *property*' includes any interest in common property for the scheme associated with the lot;  
 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are normal expenses, due to fair wear and tear, disclosed in this contract or covered by moneys held in the sinking fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- 23.5 The *parties* must adjust under clause 14.1 -  
 23.5.1 a regular periodic contribution;  
 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and  
 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract -  
 23.6.1 the vendor is liable for it if it was levied before the contract date (unless it relates to work not started by that date), even if it is payable by instalments;  
 23.6.2 the vendor is also liable for it to the extent it relates to work started by the owners corporation before the contract date; and  
 23.6.3 the purchaser is liable for all other contributions levied after the *contract date*.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -  
 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;  
 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or  
 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if -  
 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;  
 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme -  
 ● a proportional unit entitlement for the lot is not disclosed in this contract; or  
 ● a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion; or  
 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
- 23.10 The purchaser must give the vendor 2 copies of a proper form of notice of the transfer of the lot addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each *party* can sign and give the notice as agent for the other.
- 23.13 The vendor must *serve* a certificate under section 109 Strata Schemes Management Act 1996 or section 26 Community Land Management Act 1989 in relation to the lot, the scheme or any higher scheme at least 7 days before the completion date.

- 23.14 The purchaser does not have to complete earlier than 7 days after *service* of the certificate and clause 21.3 does not apply to this provision.
- 23.15 On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.16 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.17 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.
- 23.18 If a general meeting of the owners corporation is convened before completion -
- 23.18.1 if the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.18.2 the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.

## 24 Tenancies

- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* -
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the *property* is to be subject to a tenancy on completion or is subject to a tenancy on completion -
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must *serve* any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 *normally*, the purchaser can claim compensation (before or after completion) if -
- any of Parts 2 to 7 of the Retail Leases Act 1994 applies to the tenancy, unless this contract discloses that the tenancy commenced on or after 1 August 1994;
  - a disclosure statement required by the Act was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Act.
- 24.4 If the *property* is subject to a tenancy on completion -
- 24.4.1 the vendor must allow or transfer -
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money if the fund or interest earned by the fund that has been applied for any other purpose;
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose; and
- 24.4.2 if the security is not transferable, each *party* must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser -
- a proper notice of the transfer addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given to the tenant under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.
- 24.5 Rights under this clause continue after completion, whether or not other rights continue.

**25 Qualified title, limited title and old system title**

- 25.1 This clause applies only if the land (or part of it) -  
 25.1.1 is under qualified, limited or old system title; or  
 25.1.2 on completion is to be under one of those titles.
- 25.2 The vendor must *serve* a proper abstract of title *within* 7 days after the contract date.
- 25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is *served* on the contract date.
- 25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document -  
 25.4.1 shows its date, general nature, names of parties and any registration number; and  
 25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.
- 25.5 An abstract of title -  
 25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);  
 25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;  
 25.5.3 *normally*, need not include a Crown grant; and  
 25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.
- 25.6 In the case of land under old system title -  
 25.6.1 in this contract 'transfer' means conveyance;  
 25.6.2 the purchaser does not have to *serve* the form of transfer until after the vendor has *served* a proper abstract of title; and  
 25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.
- 25.7 In the case of land under limited title but not under qualified title -  
 25.7.1 *normally*, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);  
 25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and  
 25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).
- 25.8 The vendor must give a proper covenant to produce where relevant.
- 25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.
- 25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar General of the registration copy of that document.

**26 Crown purchase money**

- 26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.
- 26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.
- 26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.
- 26.4 To the extent the purchaser is liable for it, the *parties* must adjust any interest under clause 14.1.

**27 Consent to transfer**

- 27.1 This clause applies only if the land (or part of it) is restricted title land (land that cannot be transferred without consent under *legislation*).
- 27.2 The purchaser must properly complete and then *serve* the purchaser's part of an application for consent to transfer of the land (or part of it) *within* 7 days after the contract date.
- 27.3 The vendor must apply for consent *within* 7 days after *service* of the purchaser's part.
- 27.4 If consent is refused, either *party* can *rescind*.
- 27.5 If consent is given subject to one or more conditions that will substantially disadvantage a *party*, then that *party* can *rescind within* 7 days after receipt by or *service* upon the *party* of written notice of the conditions.
- 27.6 If consent is not given or refused -  
 27.6.1 *within* 42 days after the purchaser *serves* the purchaser's part of the application, the purchaser can *rescind*;  
 or  
 27.6.2 *within* 30 days after the application is made, either *party* can *rescind*.
- 27.7 If the *legislation* is the Western Lands Act 1901 each period in clause 27.6 becomes 90 days.
- 27.8 If the land or part is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.
- 27.9 The completion date becomes the later of the completion date and 14 days after *service* of the notice granting consent to transfer.

**28 Unregistered plan**

- 28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.
- 28.2 The vendor must do everything reasonable to have the plan registered *within* 6 months after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under *legislation*.



- 28.3 If the plan is not registered *within* that time and in that manner -  
 28.3.1 the purchaser can *rescind*; and  
 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2.  
 28.4 Either *party* can serve notice of the registration of the plan and every relevant lot and plan number.  
 28.5 The completion date becomes the later of the completion date and 21 days after *service* of the notice.  
 28.6 Clauses 28.2 and 28.3 apply to a plan that is to be registered before the plan is registered.

## 29 Conditional contract

- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.  
 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.  
 29.3 If this contract says the provision is for the benefit of a *party*, then it benefits only that *party*.  
 29.4 If anything is necessary to make the event happen, each *party* must do whatever is reasonably necessary to cause the event to happen.  
 29.5 A *party* can *rescind* under this clause only if the *party* has substantially complied with clause 29.4.  
 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a *party* who has the benefit of the provision, the *party* can *rescind within 7 days* after either *party serves* notice of the condition.  
 29.7 If the *parties* can lawfully complete without the event happening -  
 29.7.1 if the event does not happen *within* the time for it to happen, a *party* who has the benefit of the provision can *rescind within 7 days* after the end of that time;  
 29.7.2 if the event involves an approval and an application for the approval is refused, a *party* who has the benefit of the provision can *rescind within 7 days* after either *party serves* notice of the refusal;  
 29.7.3 the completion date becomes the later of the completion date and 21 days after the earliest of -  
     ● either *party serving* notice of the event happening;  
     ● every *party* who has the benefit of the provision *serving* notice waiving the provision;  
     ● the end of the time for the event to happen.  
 29.8 If the *parties* cannot lawfully complete without the event happening -  
 29.8.1 if the event does not happen *within* the time for it to happen, either *party* can *rescind*;  
 29.8.2 if the event involves an approval and an application for the approval is refused, either *party* can *rescind*;  
 29.8.3 the completion date becomes the later of the completion date and 21 days after either *party serves* notice of the event happening.  
 29.9 A *party* cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

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## WARNING

### SMOKE ALARMS

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

## 30. Additional Miscellaneous

### 30.1 Definitions

In this Contract, unless inconsistent with the context or subject matter:

**Approvals** means all necessary approvals, consents, permissions and licences of all relevant Authorities which must be obtained under Law to carry out the Vendor's Works and implement the Subdivision, including Development Consent.

**Authority** includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; and
- (c) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Property or any part of it.

**Bank Bill Rate** means:

- (a) the average 3 month bid rate displayed on or about 10.30am Sydney time on the due date for payment on the Reuters screen BBSY page for a period from the due date for payment until the date of payment; or
- (b) if no average bid rate is published for a term equivalent to that period, an alternative rate determined by the Vendor acting reasonably.

**Business Day** means any day except Saturday or Sunday or a day that is a public holiday throughout New South Wales.

**Completion** means the completion of the sale and purchase of the Property under this Contract.

**Completion Date** means the date which 30 days after the Vendor notifies the Purchaser that Practical Completion has occurred (or, if that day is not a Business Day, the next Business Day).

**Conditions Precedent** has the meaning given to it in clause 33.

**Cost** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid), including where appropriate all legal fees.



**Council** means Ballina Shire Council.

**Development Consent** means the development consent obtained, or to be obtained, by the Vendor from the Council to enable the Vendor to carry out the Vendor's Works and implement the Subdivision.

**Gross Lettable Area** means gross lettable area measured in accordance with the Property Council Method of Measurement.

**Guarantee** means the form of guarantee and indemnity in Annexure E.

**Guarantor** means Harvey Norman Holdings Limited ACN 003 237 545.

**Harvey Norman Retail Showroom** means the building marked "Harvey Norman Showroom" on the Proposed Development Plan.

**Harvey Norman Warehouse** means the building marked "Harvey Norman Warehouse" on the Proposed Development Plan.

**Interest** means the amount determined by multiplying the amount on which interest is to be paid by the per annum rate which is the Bank Bill Rate plus 3%.

**Interest Period** means the period commencing on the day following the Completion Date and ending on the date of Completion.

**Laws** means the requirements of all statutes, rules, regulations, proclamations, ordinances or by-laws and any orders, directions or notices of any Authority.

**LPI** means New South Wales Department of Lands, Land and Property Information Division.

**Method of Measurement** means the Method of Measurement of Buildings (1997 Revision) adopted by the Property Council.

**Option Deed** means the form of option deed attached as Annexure D, with the date of this Contract inserted in the definition of "Previous Sale Contract".

**Option Guarantee** means the form of guarantee and indemnity in Annexure G.

**Practical Completion** means the latest to occur of:

- (a) certification by a suitably qualified engineer (who may be an employee of the Vendor) that the Vendor's Works are complete in all material respects except for minor defects or omissions which do not adversely impact on their use; and
- (b) the Registration of the Subdivision Plan and Section 88B Instrument and the issue by the LPI of the relevant certificate or certificates of title for the Property.

**President** means the president or other officer in a substantially similar position.

**Property** means the Land and any improvement on it which forms part of the Southern Cross Industrial Estate together with the inclusions, but not the exclusions, described on the front page of the standard terms which form part of this Contract.

**Property Council** means the Property Council of Australia Limited (New South Wales Division).

**Proposed Development** means the retail and warehouse development the Purchaser proposes to develop on the Land, comprising:

- (a) the Harvey Norman Retail Showroom with a Gross Lettable Area of not less than 3,300m<sup>2</sup>; and
- (b) the Harvey Norman Warehouse with a Gross Lettable Area of not more than 1,500m<sup>2</sup>,

such areas determined in accordance with the Method of Measurement and which is generally consistent with the Proposed Development Plan.

**Proposed Development Plan** means the plan showing the Purchaser's Proposed Development, a copy of which is Annexure C to this Contract.

**Purchase Price** means the price payable for the Property under this Contract, being the amount calculated in accordance with clause 35.

**Purchaser's Development Consent** means a planning approval issued by the Council with respect to the Proposed Development.

**Registered** and **Registration** means registered by LPI as a deposited plan and registration by LPI as a deposited plan, respectively.

**Section 88B Instrument** means the form of instrument setting out the terms of restrictions on the use of land intended to be created pursuant to section 88B of the *Conveyancing Act 1919* (NSW) in Annexure H.

**Services** means those installations, services and utilities provided to the Property which are consistent with the installations, services and utilities provided by the Vendor to industrial lots created on the Southern Cross Industrial Estate at the Contract date, being:

- (a) water;
- (b) sewer;
- (c) electricity;
- (d) telephone; and
- (e) storm water drainage to the extension of Boeing Avenue.

**Subdivision** means the proposed subdivision of the Land in folio identifiers 1/237752 and 87/1118585 to create the Property, generally in accordance with the Subdivision Plan.

**Subdivision Plan** means the draft subdivision plan a copy of which is Annexure B to this Contract and if the proposed plan is modified under clause 44.1 means (except in those sub-clauses) that plan as modified.

**Subdivision Standards** means the relevant edition as at the date of this Contract of each of the Ballina Shire Council Subdivision Code and the Northern Rivers Local Government Design and Construction Manual.

**Sunset Date** means 5pm on the third anniversary of the date of this Contract, as extended pursuant to clause 33.5.

**Vendor's Works** means:

- (a) the construction of:
  - (i) Boeing Avenue, from Stinson Street to the Northern corner of Lot 1 on the Subdivision Plan, marked "Road A" on the Subdivision Plan; and
  - (ii) Stinson Street, between De Haviland Crescent to the South East and Boeing Avenue to the North West, marked "Road B" on the Subdivision Plan,

to a standard consistent with the other roads constructed on the Southern Cross Industrial Estate, including for each of Road A and Road B the forming and bitumen sealing of the road, concrete kerb and guttering and the installation of the Services; and
- (b) those land filling and civil construction works required so that:
  - (i) the Property complies with the Subdivision Standards; and
  - (ii) the site level of the Property exceeds the 1 in 100 year flood levels,

using only land fill suitable for industrial use of the Property which is permitted by Law, placed and compacted in accordance with the relevant Australian Standard for filling land, as certified by a suitably qualified engineer (who may be an employee of the Vendor).

### 30.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The **singular** includes the plural and conversely.
- (b) A **gender** includes all genders.
- (c) Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning.
- (d) **clause, paragraph** or **sub-clause** means a clause, paragraph or sub-clause, respectively, of this Contract.
- (e) Unless stated otherwise, one provision does not limit the effect of another.
- (f) A reference to this **Contract** includes any amendment, novation, supplement, variation or replacement of it from time to time, except to the extent prohibited by this Contract.
- (g) Mentioning anything after **includes** or **including** does not limit what else may be included.
- (h) A reference to any **legislation** or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.



### 30.3 Index to Annexures

In this Contract, the Annexures are defined as set out in the table below.

Annexure No.	Definition
A.	Execution by the parties
B.	Subdivision Plan
C.	Proposed Development Plan
D.	Option Deed
E.	Guarantee
F.	Statutory disclosure documents
G.	Option Guarantee
H.	Section 88B Instrument
I.	Statutory Enquiries Annexure

### 30.4 Service by facsimile (Replaces clause 20.6.5)

Despite anything in clause 20.6, a document is served by facsimile by or on a party:

- (a) when recorded on the sender's transmission result report unless:
  - (i) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or illegible form; or
  - (ii) the transmission result report indicates a faulty or incomplete transmission;
- (b) if sent using the solicitor's fax number stated in this Contract or any other fax number which that solicitor may have notified to the sender;
- (c) where there is no solicitor named in this Contract in respect of a party, if sent using the fax number stated in the contract (if any) in respect of that party or any other fax number which that party may have notified to the sender; and
- (d) on the Business Day on which it is received unless it is received after 5pm in which case it will be taken to have been served on the commencement of the next Business Day.

### 30.5 Documents attached to contract

- (a) For the purposes of clause 10.1.9, the substance of all material contained in any document (or copy of any document) attached to this Contract is disclosed in this Contract whether or not the document is included in the list of documents on page 2.
- (b) If before this Contract is signed by or on behalf of the Purchaser a document or copy of a document, at the request of the Vendor or the Vendor's solicitor, was attached to this Contract by or on behalf of the Purchaser or the Purchaser's

solicitor, the person attaching that document or copy did so as the agent of the Vendor.

### 30.6 Severance

Any provision of this Contract which is prohibited or unenforceable is ineffective to the extent of the prohibition or unenforceability but the validity or enforceability of the remaining provisions of this Contract are not affected.

### 30.7 Further assurances

Each party to this Contract must sign and execute all documents and do all things as may be reasonably required to be done by the party to give effect to this Contract.

### 30.8 References to disclosure

In this Contract, a reference to a document, information, matter or thing having been disclosed to the Purchaser includes anything which has been provided to or made available for inspection by the Purchaser, whether or not the Purchaser has actually inspected or examined the relevant document, information, matter or thing.

## 31. Amendments to Printed Conditions

The printed conditions (clauses 1 to 29 inclusive) of this Contract are amended as follows:

- (a) clauses 2.6, 2.7 and 2.9 are deleted;
- (b) clauses 3 and 4.5 are deleted;
- (c) clause 7.1.1 is deleted;
- (d) in clause 7.2.1, the figure of 10% is deleted and replaced with the figure 5%.
- (e) clause 13 is deleted;
- (f) in clause 16.5, the words *plus another 20% of that fee* are deleted;
- (g) clause 16.6 is deleted.
- (h) clause 20.6.5 is deleted; and
- (i) clauses 23, 24, 25, 26, 27, and 28 are deleted.

## 32. Investment of Deposit

Subject to clauses 33.4 and 53.2 the Purchaser shall pay the Deposit to the Depositholder on the Contract Date, to be dealt with as follows.

- (a) The Depositholder shall deposit the Deposit with an Australian trading bank in an interest bearing account at call in the Depositholder's name as stakeholder in trust for the Vendor and the Purchaser.
- (b) The parties must give the Depositholder their tax file numbers on or before the date on which the Deposit is invested.
- (c) If Completion occurs, the Deposit shall be paid to the Vendor.

- (d) Subject to paragraph (e), the Vendor and the Purchaser are each entitled to one half of any Net Interest earned on the invested Deposit, if the Deposit is released to the Vendor on or after Completion.
- (e) The Vendor is entitled to any Net Interest earned on the invested Deposit, if the Deposit is forfeited to the Vendor in circumstances where this Contract is not Completed as a result of the default of the Purchaser.
- (f) Subject to clause 32(e), the Purchaser is entitled to any Net Interest earned on the invested Deposit, if the Deposit is refunded to the Purchaser where this Contract is not Completed or as a result of the default of the Vendor.
- (g) The Deposit shall be deposited with an Australian trading bank at the sole risk of the party who becomes entitled to it.
- (h) The parties, until the party entitled to the Deposit is determined, at which time that party (solely), shall keep the Depositholder indemnified from any tax that may become payable on interest accruing on the Deposit.
- (i) **Net Interest** means the interest earned on the invested Deposit less any bank charges, financial institutions duty, bank debit tax and similar taxes and charges in connection with the investment of the Deposit.

### 33. Conditions Precedent

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#### 33.1 Definition

Despite any other provision of this Contract except this clause 33, Completion may not occur unless:

- (a) Practical Completion occurs;
- (b) the Purchaser, no later than 90 days after the Vendor gives notice that Development Consent has been granted, lodges with Council a development application for the Proposed Development (time being of the essence);
- (c) on Completion, the Purchaser provides to the Vendor the Option Deed and the Option Guarantee, each in duplicate duly executed by the Purchaser and the guarantor (the **Conditions Precedent**).

#### 33.2 Waiver

- (a) The Conditions Precedent in clauses 33.1(b) and 33.1(c) are for the sole benefit of and may only be waived by the Vendor in writing in its absolute discretion.
- (b) The Condition Precedent in clause 33.1(a) is for the sole benefit of and may only be waived by the Purchaser in writing in its absolute discretion.

#### 33.3 Parties to take steps

- (a) The Vendor must promptly take all steps reasonably necessary and within its control to procure that the Condition Precedent in clause 33.1(a) is fulfilled.

- (b) The Purchaser must promptly take all steps reasonably necessary and within its control to procure that the Conditions Precedent in clauses 33.1(b) and 33.1(c) are fulfilled.

### 33.4 Termination

- (a) If:
  - (i) the Conditions Precedent are not waived by the Vendor in writing or fulfilled by the date specified in clause 33; and
  - (ii) the Vendor is not in default under this clause,
 the Vendor may terminate this Contract within 10 Business Days of the relevant date, by giving notice to the Purchaser specifying which Condition Precedent the termination relates to.
- (b) Without limiting any other rights it may have under this Contract, if the Vendor terminates this Contract as a result of the Purchaser's failure to fulfil the Condition Precedent in clause 33.1(b), the Deposit shall be refunded to the Purchaser but the Vendor may deduct from the Deposit all Costs incurred in relation to:
  - (i) the preparation of the Subdivision Plan;
  - (ii) the applications for all Approvals;
  - (iii) the preparation and negotiation of this Contract, the Option Deed and the sale contract annexed to it;
  - (iv) any consultant's fees and surveyors fees; and
  - (v) stamp duty (if any).
- (c) If this Contract is terminated by the Vendor as a result of the Purchaser's failure to fulfil the Condition Precedent in clause 33.1(c), the Purchaser forfeits the deposit to the Vendor and the Vendor also keeps the Net Interest.
- (d) If this Contract is terminated under this clause 33.4 then subject to clause 32, neither party shall have any further liability to the other, except with respect to any pre-existing breach.
- (e) If the Condition Precedent in clause 33.1(a) is not waived by the Purchaser in writing or satisfied by the Sunset Date then either party (not being in default under this Contract) may terminate this Contract within 10 Business Days of the Sunset Date by giving written notice to the other party. If the Purchaser terminates this Contract under this clause 33.4(e), the Deposit and the Net Interest will be refunded to the Purchaser.

### 33.5 Events of Delay

- (a) The Sunset Date will be extended for each day of delay caused by an event or cause beyond the reasonable control of the Vendor, including:
  - (i) act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;

- (ii) strike, lockout or other labour difficulty;
  - (iii) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
  - (iv) the effect of any Laws; and
  - (v) embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage or lack of transportation,
 to the extent it is beyond the reasonable control of the Vendor (each a **Delay Event**).
- (b) If the Vendor requires an extension to the Sunset Date, it must give the Purchaser a written notice within 10 Business Days of the Vendor becoming aware of the Delay Event. The notice must specify:
  - (i) details of the Delay Event;
  - (ii) how the Delay Event will impact the Sunset Date;
  - (iii) measures being taken to overcome the Delay Event; and
  - (iv) the number of days extension to the Sunset Date requested by the Vendor.
 If the Vendor is not able to provide this information in the notice, the Vendor must provide the information as soon as practicable after the service of the notice.
- (c) If the Vendor is entitled to an extension of time, the Sunset Date will be extended in accordance with the Vendor's entitlement.

### 33.6 Purchaser's right to rescind if material adverse effect

- (a) The Purchaser must lodge with Council its application for development consent for the Proposed Development no later than 90 days after the Vendor gives notice to the Purchaser that Development Consent has been granted (time being of the essence).
- (b) The Purchaser's application for development consent for the Proposed Development must:
  - (i) be consistent with the Proposed Development; and
  - (ii) materially and substantially comply with the relevant planning instruments and requirements and control plans of the Council and any other relevant Authority current at the date the application is lodged.
- (c) If, prior to Completion:
  - (i) Council imposes conditions on the Purchaser's Development Consent; or
  - (ii) there are changes to the Subdivision Standards,
 which have a material adverse effect on the Purchaser's Proposed Development, then the Purchaser can rescind this Contract by giving notice to the Vendor within 15 Business Days (time being of the essence) of:
  - (iii) the date of issue of the Purchaser's Development Consent; or

- (iv) the date of gazettal or public advertisement of the change to the Subdivision Standards,

whichever applies.

- (d) If the Purchaser rescinds this Contract pursuant to this clause 33.6, then without limiting any other rights the Vendor may have under this Contract, the Deposit and the Net Interest will be refunded to the Purchaser.
- (e) If the right of rescission conferred by this sub clause is not exercised within 15 Business Days of:
  - (i) Council imposing conditions on the Purchaser's Development Consent; or
  - (ii) changes to the Subdivision Standards,
 (time being of the essence), this Contract remains binding in all respects as though the right of rescission had not been included.

### **33.7 Dispute as to material adverse effect**

If there is a dispute between the parties in relation to whether the conditions of the Purchaser's Development Consent or any change to the Subdivision Standards after the Contract date have a material adverse effect on the Purchaser's Proposed Development and that dispute is not resolved within 10 Business Days of notice that a dispute exists being given by one party to the other, then the matter may be referred by either party to a practising quantity surveyor nominated by the President for the time being of the Australian Institute of Quantity Surveyors (NSW Chapter) for determination. In relation to that determination:

- (i) the quantity surveyor acts as an expert and not as an arbitrator;
- (ii) it is final, conclusive and binding on both parties; and
- (iii) any costs incurred shall be borne equally by the Vendor and the Purchaser.

## **34. Vendor's Approvals**

### **34.1 Vendor to obtain**

The Vendor, at its Cost, must use reasonable endeavours to procure all Approvals necessary to carry out the Vendor's Works and to Register the Subdivision Plan.

### **34.2 Vendor to notify the Purchaser**

The Vendor must notify the Purchaser that it has obtained Development Consent within 3 Business Days of obtaining Development Consent.

### **34.3 Vendor as consent Authority**

Despite any other provision of this Contract:

- (a) this Contract is not intended to operate to fetter, in any manner:
  - (i) the power of the Vendor to make any Law; or

- (ii) the exercise by the Vendor of any statutory power or discretion, all referred to in this Contract as a **Discretion**;
- (b) no provision of this Contract is intended to, nor does it, constitute any fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Contract is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 34.3 is substantially satisfied; and
  - (ii) if clause 34.3(b)(i) cannot be achieved without giving rise to a fetter on a Discretion, the relevant provision is to be severed and the remainder of this Contract has full force and effect; and
  - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Contract which is held to be a fetter to the extent that is possible, having regard to the relevant court judgment; and
- (c) without limiting this clause 34.3, nothing in this deed operates to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the *Environmental Planning and Assessment Act 1979 (NSW)*.

#### **34.4 Vendor to notify of Registration**

The Vendor shall within 10 Business Days after the date on which the Subdivision Plan is lodged for Registration notify the Purchaser of the relevant lot and deposited plan number to enable preparation of the form of transfer.

### **35. Purchase Price**

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#### **35.1 Calculation of purchase price**

Despite the amount specified on the cover page of this Contract, the purchase price payable for the Property under this Contract is to be calculated using the following formula:

$$PP = \$180 \times A$$

where:

PP = the Purchase Price; and

A = the area of the Land (expressed in square metres) as determined by the survey referred to in clause 35.2.

#### **35.2 Survey of area of Land**

- (a) Within 10 Business Days after Practical Completion, the Vendor must provide to the Purchaser a copy of the survey of the area of the Property prepared by a registered surveyor in accordance with the requirements of the LPI and lodged with the LPI for the purpose of Registration of the Subdivision Plan.

- (b) Except in the case of manifest error, the surveyor's measurement is final and binding on the parties.

### 36. Termination / Rescission

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- (a) If a party to this Contract:
  - (i) is a corporation and before completion:
    - (A) it enters into a scheme;
    - (B) it makes any arrangement for the benefit of creditors;
    - (C) an order is made to wind up the party;
    - (D) a liquidator, administrator or official manager is appointed in respect of the party;
    - (E) a mortgagee enters into possession of all or a substantial part of the assets of the party;
    - (F) it is deemed by any relevant legislation to be unable to pay its debts; or
    - (G) a receiver, receiver and manager or agent of a mortgagee is appointed to all or a substantial part of the assets of the party; or
  - (ii) is an individual who before completion is declared bankrupt, then that party is in default under this Contract.
- (b) If a party to this Contract is an individual who before completion:
  - (i) dies; or
  - (ii) becomes mentally ill,
 then the other party may rescind this Contract.

### 37. Goods and Services Tax

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#### 37.1 Definitions

In this clause:

**Consideration** has the meaning given by the GST Law;

**GST** has the meaning given by the GST Law;

**GST Amount** means, in relation to a Taxable Supply, the amount of GST payable in respect of that Taxable Supply;

**GST Group** has the meaning given by the GST Law;

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;



**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit to which a party is entitled includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law;

**Margin Scheme** has the meaning given by the GST Law;

**Taxable Supply** has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.

### 37.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### 37.3 Liability net of GST

Any reference in the calculation of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

### 37.4 No Merger

This clause will not merge on completion and will continue to apply after expiration or termination of this Contract.

## 38. Adjustment Date

Despite anything in clause 1, if completion does not occur on or before the Completion Date as a result of the breach of or default by the Purchaser, *adjustment date* means the earlier of the giving of possession to the Purchaser or the Completion Date.

## 39. Land Tax (Replaces clause 16.6)

If, not less than 7 days before the Completion Date, the Purchaser serves a land tax certificate showing a charge on any of the Land, on completion the Vendor must give the Purchaser a land tax certificate showing the charge is no longer effective.

## 40. Guarantee

The Purchaser must procure the Guarantor's execution of the Guarantee and deliver it to the Vendor's solicitors on the Contract Date. In this respect time is of the essence.

## **41. Confidentiality**

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### **41.1 Confidentiality**

Subject to clause 41.2, the existence and terms of this Contract (and all books, documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract) must be kept confidential and must not be disclosed to any other person without the written consent of the other parties.

### **41.2 Permitted disclosure**

Clause 41.1 shall not apply in the following circumstances:

- (a) any disclosure required by Law;
- (b) any disclosure required by any applicable stock exchange listing rules;
- (c) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (d) a disclosure to bankers or other financial institutions of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if those persons undertake to keep information disclosed confidential; or
- (e) a disclosure of any information which is a matter of public record other than by breach of this clause 41.

### **41.3 Public announcements**

Except as required by applicable Law or the requirements of an Authority, all press releases and other public announcements relating to the transactions dealt with by this Contract must be in terms agreed in writing by the parties.

## **42. Purchaser as Trustee/Responsible Entity**

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### **42.1 Purchaser as trustee/responsible entity**

If the Purchaser enters into this Contract as trustee of any trust (the **Trust**), then the Purchaser:

- (a) discloses that it enters into this Contract as trustee of the Trust;
- (b) warrants to the Vendor that:
  - (i) the Trust is created validly and is in existence;
  - (ii) the Purchaser is the sole trustee of the Trust and has been appointed validly;
  - (iii) the Purchaser has full and free power to enter into this Contract and to perform all the obligations imposed upon it under this Contract; and
  - (iv) this Contract has been duly authorised, executed and delivered by the Purchaser and constitutes and shall constitute a valid legal and binding

instrument and that if any consent or approval is required for the Purchaser to enter into this Contract or the performance by the Purchaser of its obligations under this Contract, it has been obtained;

- (c) acknowledges that:
  - (i) the Purchaser accepts and undertakes personal liability under this Contract;
  - (ii) the Purchaser must not before the satisfaction of all liability under this Contract, personally and/or by the Trust exercise in its own favour any right of indemnity, lien or charge to which it may be entitled under or in respect of the assets of the Trust; and
  - (iii) if any of the assets of the Trust are at any time in the hands of the Purchaser free of their Trust character by virtue of the exercise or purported exercise of any such right of indemnity, lien or charge, the Purchaser must hold those assets on behalf of the Vendor to the extent to which any liability under this Contract has not been satisfied;
- (d) the Purchaser agrees with the Vendor that if at any time before satisfaction of any liability under this Contract:
  - (i) the Purchaser ceases for any reason to be the sole trustee of the Trust, the Purchaser must procure any new or additional trustee of the Trust to execute in favour of the Vendor such covenants relating to this Contract as the Vendor may reasonably require, including covenants in the like terms as those contained in this clause;
  - (ii) it will notify the Vendor promptly in writing if the Trust is determined or for any reason ceases to exist.

## **43. Covenants and easements**

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### **43.1 At date of contract**

Subject to clause 43.3, the Purchaser acknowledges that at the date of this Contract all easements and restrictive and positive covenants which are desirable or necessary for the Vendor to create or enter into in favour of the Council, the Registrar General, or any Authority may not yet exist.

### **43.2 Right of Vendor to create Interests**

Subject to clause 43.3, if it is necessary or desirable for the Vendor to create an interest referred to in clause 43.1, the Vendor may do so and the Purchaser cannot make a claim, demand, objection or requisition, seek any compensation or rescind or terminate or purport to rescind or terminate or delay completion in relation to such interest.

### **43.3 Notice of creation of easements, etc**

- (a) The Vendor shall notify the Purchaser in writing of any interest referred to in clause 43.1 (which is not already contemplated by this Contract) being created. If the

interest being created (which is not already contemplated by this Contract) has a material adverse effect upon the Proposed Development then the Purchaser, acting reasonably, may (subject to clause 43.3(b)) rescind this Contract by giving notice to the Vendor within 15 Business Days of service of the Vendor's notice (time being of the essence) and the Deposit paid will be refunded in full.

- (b) If there is a dispute between the parties as to whether an interest referred to in clause 43.3(a) (which is not already contemplated by this Contract) materially adversely affects the Proposed Development and that dispute is not resolved within 10 Business Days of notice of a dispute being given by one party to the other, then the matter may be referred by either party to a practising quantity surveyor nominated at the request of either party by the President for the time being of the Australian Institute of Quantity Surveyors (NSW Chapter) for determination. In relation to that determination:
  - (i) the quantity surveyor acts as an expert and not as an arbitrator;
  - (ii) it is final, conclusive and binding on both parties; and
  - (iii) any costs incurred shall be borne equally by the Vendor and the Purchaser.
- (c) If the right of rescission conferred by this sub clause is not exercised within 15 Business Days of service of the Vendor's notice under paragraph (a) (time being of the essence) this Contract remains binding in all respects as though the right of rescission had not been included.

#### **43.4 Registration of Section 88B Instrument**

Without limiting clauses 43.1 and 43.2 but despite clause 43.3, the Purchaser acknowledges that the Vendor intends to Register with the Subdivision Plan the Section 88B Instrument, and the Purchaser cannot make a claim, demand, objection or requisition, seek any compensation or rescind or terminate or purport to rescind or terminate or delay completion in relation to such Section 88B Instrument.

### **44. Subdivision Plan**

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#### **44.1 Modifications**

- (a) The Purchaser acknowledges having inspected the Subdivision Plan and, despite anything else in this Contract, must make no claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Completion in relation to a modification:
  - (i) to the Subdivision Plan which may be required by:
    - (A) Council or any Authority to obtain its approval of the Subdivision Plan; or
    - (B) LPI to obtain the Registration of the Plan;
  - (ii) to correct an error which is evident on the face of the Subdivision Plan;

- (iii) which includes land in addition to that to which the Subdivision Plan presently or then relates;
  - (iv) to the Subdivision Plan which is agreed to in writing by the Purchaser;
  - (v) to the Subdivision Plan where the Vendor has given notice of the alteration to the Purchaser under paragraph (c) and the Purchaser has not exercised the right of rescission conferred by that paragraph; or
  - (vi) to the Subdivision Plan which is minor.
- (b) For the purposes of paragraph (a), the following modifications are minor:
- (i) any modification to a lot in the Subdivision Plan other than the Property; or
  - (ii) any modification to the boundaries of the Property the effect of which does not reduce the total area of the Property to less than 3.45 hectares; or
  - (iii) any other alteration which does not have a material adverse effect on the Proposed Development.

Other alterations may also be a minor alteration.

- (c) If there is any modification to the Subdivision Plan which is other than minor, or which materially adversely effects the Proposed Development the Vendor shall notify the Purchaser in writing of that modification and the Purchaser shall have 10 Business Days (time being of the essence) from the date of that notification to rescind this Contract. If the right of rescission conferred by this sub clause is not exercised within 10 Business Days after the Vendor has notified the Purchaser of that modification (time being of the essence), this Contract remains binding in all respects as though the right of rescission had not been included. If the right of rescission is exercised in time the deposit will be refunded to the Purchaser in full.
- (d) If there is a dispute between the parties as to whether any modification to the Subdivision Plan is minor or has a material adverse effect on the Proposed Development which is not resolved within 10 Business Days of service of the Vendor's notice under paragraph (b), then the matter may be referred by either party to a quantity surveyor nominated by the President for the time being of the Australian Institute of Quantity Surveyors (NSW Chapter) for determination. In relation to that determination:
- (i) the quantity surveyor acts as an expert and not as an arbitrator;
  - (ii) it is final, conclusive and binding on both parties; and
  - (iii) any costs incurred shall be borne equally by the Vendor and the Purchaser.

## **45. Matters Affecting the Property**

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### **45.1 Purchaser's acknowledgments**

The Purchaser acknowledges that prior to entering into this Contract the Purchaser has caused a satisfactory inspection of the Property and matters and documents relating to it to

be carried out and the Purchaser (subject to the other provisions of this Contract) must make no claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Completion in respect of:

- (a) the condition, state of repair, suitability, quality, sufficiency, viability, profitability or potential of the Property;
- (b) the presence of any sewer, manhole or vent on the Property;
- (c) any environmental hazard or contamination;
- (d) subject to clause 33.3(a), any latent or patent defect in the Property;
- (e) anything which is disclosed in the Subdivision Standards;
- (f) anything which is disclosed or referred to in this Contract;
- (g) anything which is disclosed in the Central Register of Restrictions certificates dated 13 February 2008, copies of which are included in the Statutory Enquiries Annexure, relating to interests in the Property by the following Authorities:
  - (i) Transgrid;
  - (ii) Alinta AGN Limited;
  - (iii) Department of Education & Training;
  - (iv) Department of Defence;
  - (v) East Australian Pipeline Limited;
  - (vi) Department of Water and Energy; and
  - (vii) Rail Corporation of NSW
- (h) anything which is disclosed in:
  - (i) the Property Information Enquiry Forms endorsed by Roads and Traffic Authority and dated 14 February 2008;
  - (ii) the Native Title Search Results of Ballina Local Government Area dated 18 February 2008;
  - (iii) the results of the Country Energy Solicitors Searches dated 26 February 2008; and
  - (iv) the results of the applications for search under the Mining Act 1992 and the Petroleum (Onshore) Act 1991 dated 18 February 2008;

copies of which are annexed to this Contract in the Statutory Enquiries Annexure.

#### **45.2 Purchaser to satisfy itself**

The Purchaser acknowledges that it has satisfied itself (and, subject to the other provisions of this Contract, must make no claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Completion):

- (a) by physical examination and an inspection, as to the state of repair and condition, quality and quantity of the Property;

- (b) by physical examination, that the property offered for sale and inspected is identical to the Property;
- (c) by physical examination, as to the neighbourhood in which the Property is situated;
- (d) as to the value of the Property from its own independent valuations and reports;
- (e) by enquiry of the appropriate Authorities, as to the zoning and planning restrictions (including all planning approvals, permits and consents) on or in respect of the Property and the use to which the Property may be put and the development potential of the Property;
- (f) as to encumbrances affecting the Property, by perusal of the terms and conditions of any documents relating to the encumbrances;
- (g) as to whether or not the boundaries, description or area of the Property are correctly described in this Contract;
- (h) as to whether or not any requisitions, directions or recommendations delivered by any Authority in respect of the Property have been complied with;
- (i) as to whether or not any notices of resumption or intending resumption affecting the Property have been delivered;
- (j) as to whether or not any consents, approvals, permits or licences desirable or required to be held for the present use of the Property have been granted by any Authority;
- (k) as to whether or not any dividing fences forming part of the Property are on the true boundaries of the Land;
- (l) as to the rights and privileges pertaining to the Property, by perusal of the terms and conditions of any documents relating to the rights and privileges;
- (m) as to any agreements or arrangements with the owners or occupiers of adjoining or nearby property, including the means of access to and egress from the Property and the terms of all easements and licences benefiting or affecting the Property;
- (n) as to any Services connected or provided to the Property;
- (o) as to any building, engineering, architectural or other plans or documents in relation to the Property which the Purchaser or any representative of the Purchaser may have seen or been shown before signing this Contract;
- (p) by its own examination, as to the present and future economic feasibility, viability and economic return of the Property, whether express or implied.

#### **45.3 No reliance**

The Purchaser acknowledges that (subject to the express provisions of this Contract):

- (a) at no time:
  - (i) has the Vendor, or any person on the Vendor's behalf, made or given; or
  - (ii) has the Purchaser relied on,
 any representation, warranty, promise or forecast;

- (b) no other statements or representations:
  - (i) have induced or influenced the Purchaser to enter into this Contract or to agree to any or all of its terms;
  - (ii) have been relied on in any way by the Purchaser as being accurate;
  - (iii) have been warranted to the Purchaser as being true; or
  - (iv) have been taken into account by the Purchaser as being important to the Purchaser's decision to enter into this Contract or agree to any or all of its terms;
- (c) it has relied on its own enquiries in relation to all matters affecting the Property and does not rely on the Vendor's assessment (if any) of the financial consequences and impact on the Purchaser of or arising from any information which may have been made available by the Vendor; and
- (d) it is deemed to have examined all information provided to or made available for inspection by the Vendor or otherwise available on reasonable enquiry by the Purchaser.

#### **45.4 Trade Practices Act**

To the extent permitted by law, the Purchaser agrees not to make and waives any right it may have to make any claim against the Vendor or any of its officers, employees, agents or advisers under s51A or s52 of the *Trade Practices Act 1974* (Cth), or the corresponding provision of any state or territory enactment for any statement or representation made concerning the Property.

#### **45.5 Easements and other encumbrances**

Without limiting clause 43, the Property is sold free from encumbrances, except for:

- (a) the rights and interest reserved to the Crown in the deed of grant;
- (b) all statutory rights relating to water supply, sewerage, drainage, electricity, telephone and other Services in, passing through or over the Land, whether or not protected by registered easement; and
- (c) any statutory charge over the Property in favour of an Authority which exists at Completion.

#### **45.6 Property sold as is, where is**

Subject to the other provisions of this Contract, having acknowledged that it has been given an opportunity to conduct its own enquiries about the Property, the Purchaser agrees that the Property is sold in an *as is* condition, subject to all faults and defects whether or not they are apparent. For example, this means the Purchaser accepts any liabilities, obligations, requisitions, directions, recommendations and notices now or in the future outstanding regarding the Property and the Purchaser indemnifies the Vendor against any costs, expenses or liabilities incurred by the Vendor in respect of the above (unless this Contract is terminated without default by the Purchaser).



#### 45.7 Purchaser's acknowledgement regarding Vendor's Works

The Purchaser acknowledges that at the Contract date, the construction of the road referred to in paragraph (a)(ii) of the definition of Vendor's Works is complete and that, subject to anything required to obtain the necessary engineer's certification, no further physical works needs to be made to that road for the purposes of Practical Completion.

#### 46. Caveats, etc

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If at Completion:

- (a) there is noted on any certificate of title in respect of the Property or any part of it any mortgage or caveat (other than a caveat of the type referred to in paragraph (b)), the Purchaser must accept a discharge or withdrawal so far as the same relates to the Property provided that the discharge of mortgage or withdrawal of caveat is duly executed and in registrable form and the registration fees payable on it are allowed by the Vendor to the Purchaser; or
- (b) there is noted on the certificate of title in respect of the Property a caveat lodged by or on behalf of the Purchaser or any assignee of its interest under this Contract or by any person claiming through or under the Purchaser, the Purchaser must complete this Contract despite the existence of that caveat and without requiring the Vendor to provide a withdrawal of that caveat.

#### 47. Breach of Statutory Warranty by Vendor

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- (a) If the Purchaser discovers that the Vendor has breached any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005*, the Purchaser must, within 7 days of discovering that breach, notify the Vendor in writing of that breach.
- (b) If the Vendor breaches any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005*, the Vendor may, before Completion, serve a notice:
  - (i) specifying the breach;
  - (ii) requesting the Purchaser to serve a notice irrevocably waiving the breach (**Waiver**); and
  - (iii) indicating that the Vendor intends to rescind this Contract if the Waiver is not served within 10 Business Days of service of the notice.
- (c) The Vendor may rescind this Contract if:
  - (i) the Vendor serves a notice under paragraph (b); and
  - (ii) the Purchaser does not serve the Waiver within the time required under the notice.
- (d) If the Purchaser serves a Waiver before the Vendor rescinds this Contract under paragraph (c), the Vendor is no longer entitled to rescind this Contract under paragraph (c).

- (e) The Purchaser has no claim against the Vendor for breach of any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005* other than the right of rescission conferred by that Regulation.

## 48. Notice to Complete

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### 48.1 Issue of notice

- (a) If Completion does not occur on or before 3pm on the Completion Date, at any time either party (not then being in default under this Contract) may serve on the other a notice (**Notice to Complete**) requiring Completion of this Contract on a specified date being not less than 14 days (**Notice Period**) after the date of service of the Notice to Complete.
- (b) The parties agree that:
  - (i) the Notice Period is sufficient; and
  - (ii) time will be essential for compliance with the Notice to Complete.

### 48.2 Notice Period

For the purpose of calculating the Notice Period:

- (a) the Notice Period commences at midnight on the Business Day on which the Notice to Complete is served; and
- (b) a reference to a day means the period of time commencing at midnight and ending 24 hours later.

### 48.3 Time essential

Any Notice to Complete may specify any time of the day between 11am and 3pm as the time for performance of any obligation under this Contract in which event performance by that specified time is of the essence.

## 49. Interest

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### 49.1 Payment of Interest generally

If a party (the **Payer**) does not pay an amount (other than the Purchase Price) when due under this Contract (including any GST Amount payable under clause 37, the Payer must pay to the person to whom the amount is due, in cash at the same time as the amount is paid, Interest on the amount in respect of the period commencing on the day following the day on which the amount was due and ending on the day on which it is paid in full.

### 49.2 Payment of Interest on Purchase Price

If Completion does not occur on or before the Completion Date, the Purchaser must pay to the Vendor, in cash on Completion, Interest on the balance of the Purchase Price in respect of the Interest Period.

#### **49.3 Essential term**

It is an essential term of this Contract that the relevant Interest is paid. The Purchaser may not require the Vendor to complete this Contract unless Interest payable under this Contract is paid to the Vendor on Completion.

#### **49.4 Delay by Vendor**

Clause 49.2 does not apply in respect of any part of the Interest Period during which Completion has been delayed due to the fault of the Vendor.

#### **49.5 Completion after 3pm**

If, due to no fault of the Vendor, Completion takes place after 3pm on the Completion Date or after 3pm on any day after the Completion Date, clause 49.2 applies as if Completion takes place on the Business Day after the day on which Completion actually takes place.

### **50. Real Estate Agent**

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- (a) The Vendor warrants that it has not appointed any agent to market the sale of the Property.
- (b) The Purchaser warrants that the Purchaser was not introduced to the Vendor or to the Property directly or indirectly by any real estate agent or any other person. The Purchaser indemnifies and shall keep indemnified the Vendor or demand (and if more than one, each of them) against any claims, suits, demands and actions by any agent or any other person arising out of or as a consequence of a breach of this warranty. This clause shall not merge on Completion of this Contract.

### **51. Dispute Resolution**

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#### **51.1 Negotiation**

If there is a dispute or difference (other than under clauses 33.7, 43.3(b) or 44.1(d)) (**Dispute**) between the parties arising out of or in connection with this Contract, then within 5 Business Days of a party notifying the other party in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

#### **51.2 Mediation**

- (a) If the Dispute is not settled within 10 Business Days of notification under clause 51.1, the parties will, if mutually agreed, submit the Dispute to mediation administered by the Australian Commercial Disputes Centre Limited (**ACDC**).
- (b) The mediator will be an independent person agreed between the parties or, failing agreement within 5 Business Days of a request to appoint one, a mediator will be appointed by the President of the ACDC at the request of another party.
- (c) Any mediation meetings and proceedings under this clause must be held in Sydney.

### **51.3 Arbitration**

- (a) If, within 20 Business Days (or any other period agreed to in writing between the parties) after the appointment of a mediator under clause 51.2:
  - (i) the Dispute is not settled by mediation under clause 51.2; or
  - (ii) no agreement is reached to refer the Dispute to mediation under clause 51.2,

either party may by notice to the other refer the Dispute to arbitration in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.
- (b) The arbitrator will be an independent person agreed between the parties from a panel suggested by the President of The Institute of Arbitrators and Mediators Australia or, failing agreement, an arbitrator will be appointed by the President of The Institute of Arbitrators and Mediators Australia. The arbitrator may not be the same person as the mediator appointed under clause 51.2
- (c) Subject to clause (a), the arbitration will be conducted and held in accordance with the laws of .
- (d) Any arbitration meetings and proceedings under this clause must be held in Sydney.

### **51.4 Court proceedings and other relief**

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

### **51.5 Continuation of rights and obligations**

Despite the existence of a dispute or difference each party must continue to perform this Contract.

## **52. Stamp Duty and Costs**

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- (a) Each party will bear its own Costs arising out of the negotiation, preparation and execution of this Contract.
- (b) The Purchaser will bear any stamp duty (including fines and penalties) chargeable on this Contract and on any instruments executed under this Contract. The Purchaser must indemnify the Vendor on demand against any liability for that stamp duty.

## **53. Vendor's right to terminate**

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### **53.1 Conditions**

If at any time prior to Completion the Proposed Development alters at the request of the Purchaser or the Purchaser lodges any application with an Authority to alter the Proposed Development Works with the effect that:

- (a) the Gross Lettable Area of the Harvey Norman Retail Showroom will be reduced to less than 2,970m<sup>2</sup>; or
- (b) the Gross Lettable Area of the Harvey Norman Warehouse will be increased to more than 1,650m<sup>2</sup>,

if the alteration is affected or the application is approved then the Vendor may, at its sole discretion, terminate this Contract by giving notice to the Purchaser.

### **53.2 Costs**

If the Vendor exercises its right to terminate this Contract under clause 53.1, then without limiting any other rights it may have under this Contract, the Deposit shall be refunded to the Purchaser but the Vendor may deduct from the Deposit all Costs incurred in relation to:

- (a) the preparation of the Subdivision Plan;
- (b) the applications for all Approvals;
- (c) the preparation and negotiation of this Contract and the Option Deed and the sale contract annexed to it;
- (d) any consultant's fees and surveyors fees; and
- (e) stamp duty (if any).