Klemich Real Estate Pty Ltd T/A Klemich Real Estate
1/245 Fullarton Road Eastwood SA 5063
Tel: 08 8132 0255 Agent No: 174424
Email: sold@klemich.com.au

SAR005 © reaforms Pty Ltd

CONTRACT FOR THE SALE OF LAND
RESIDENTIAL PROPERTY

Notice to purchaser: This is a contract for the sale of residential land. You may be bound by the terms of this contract if it is signed by both you and the vendor. You should seek independent legal advice if you are unsure about the terms contained in this contract. It is advisable to check section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* regarding any cooling-off rights that you may have and how to exercise them.

The Vendor agrees to sell and the Purchaser agrees to buy the property at the price and on the terms set out in this Contract.

VENDOR ASTA INVESTMENT FUND PTY. LTD. (ACN: 656 262 752)

PO BOX 490, SALISBURY SA 5108

PURCHASER _____

ABN _____ Mobile _____ Phone _____

Purchaser provides this email for service of a Form 1

Email _____

THE PROPERTY being improved / ~~unimproved~~ land situated at and known as
50 REGENT STREET KENSINGTON SA 5068 AND BEING ALLOTMENT 17 ON FILED PLAN 139097 IN THE AREA NAMED KENSIGNTON HUNDRED OF ADELAIDE AND BEING WHOLE OF CERTIFICATE OF TITLE VOLUME 5745 FOLIO 271

GST Conditions of Sale (General Conditions clause 21)

1. Is the sale the supply of *residential premises** which is *input taxed*** ? ☐ No ☒ Yes
   If Yes, GST does not apply. If No, GST applies and answer question 2.
2. If GST applies, is it included in the Purchase Price? If Yes answer question 3. ☐ No ☐ Yes
   If No, item 4 below applies.
3. If GST is included in the Purchase Price, is the margin scheme to be applied? ☐ No ☐ Yes
   If Yes (*clause 21.4 applies*).
4. If GST applies to the sale and it is not included in the Purchase Price, then GST is to be added to the Purchase Price below.

The Agent is not qualified to advise on GST liability. The Vendor and Purchaser must obtain their own professional advice.

* *residential premises means land or a building that is occupied as a residence or for residential accommodation; or is intended to be occupied, and is capable of being occupied, as a residence or for residential accommodation*

** *input taxed (meaning GST is not payable)*

PURCHASE PRICE	Amount Payable for Property	$ _____
GST	GST payable (if in addition)	_____
	TOTAL	**$** _____

Initials

DEPOSIT $ _____

The deposit will be paid:

☐ immediately after auction; or if no auction

☐ if the cooling off right is waived then on signing this Contract; or

☒ on the next day following the expiration of the "cooling off" period.

☐ other: _____

_____

SETTLEMENT DATE

Settlement will be:

☒ (a) the _____ day of _____ 20 _____; or

☐ (b) such other date as mutually agreed in writing.

_____

SCHEDULE

Inclusions: Other property (chattels and fixtures and fittings) included in the sale

ALL FIXTURES AND FITTINGS, ALL FIXED FLOOR COVERINGS, ALL LIGHT FITTINGS, WINDOW TREATMENTS, ALL BUILT IN FURNITURE AND COUNCIL RUBBISH BINS.

Exclusions: fixtures and fittings and other property not included in the sale

Personal effects: ☒ Vendor's ☒ Occupier's Other: ☐ dishwasher ☐ non-standard telephones

LOOSE FLOOR COVERINGS, FURNITURE, OUTDOOR FURNITURE, POTTED PLANTS AND ORNAMENTS.

Known Encroachments and Fences not on Boundaries (if any)

NONE KNOWN

Alterations and Improvements erected without consent ("notified works" if any) (General Condition 5)

NONE KNOWN

Works to be carried out by Vendor prior to settlement (if any "Vendor's Works")

NIL

CGT WITHHOLDING TAX

All Vendors will require a CGT clearance to avoid a withholding tax at settlement being paid to Australian Tax Office (ATO).

☒ Vendor to apply ☐ Vendor's Accountant or Tax Agent to apply

GST WITHHOLDING TAX ☐ Applicable ☒ Not Applicable

If the Property constitutes new residential premises (*substantial renovations and commercial residential premises not applicable*) or if the Property constitutes potential residential land included in a property subdivision plan as defined in *Subdivision 14-E of Schedule 1 - Taxation Administration Act 1953 (Cth)* then General Condition Clause 28 applies.

The Vendor must give the Purchaser a GST Withholding Notice at least 14 days prior to settlement. The Purchaser is personally liable to pay the required GST amount to the ATO and is discharged from paying that to the Vendor in the Purchase Price at settlement.

The 'Not Applicable' above (if marked) is Notice by the Vendor to the Purchaser pursuant to Section 14-255(1) of Schedule 1 - Taxation Administration Act 1953 (Cth) that the Purchaser is not required to make a payment under Section 14-250 of that Act. If "Applicable" is marked then the Vendor must serve a complying notice as detailed in clause 28.

SWIMMING POOL COMPLIANCE ☐ Pool present ☒ Not Applicable

If applicable, the Vendor must by law at or before settlement ensure that the swimming pool (**"Pool"**) complies with all Pool safety requirements. The Vendor will produce and/or obtain a Pool compliance certificate prior to settlement if requested by the Purchaser, on or before the later of:

- 14 days before settlement; and
- the date of this Contract,

(time is of the essence).

☐ Swimming Pool on Property (constructed pre 1 July 1993) - compliant with *Planning, Development and Infrastructure Act 2016* (SA) as amended

☐ Swimming Pool on Property (constructed post 1 July 1993) - compliant with *Planning, Development and Infrastructure Act 2016* (SA) as amended

☐ Unsure

☐ Non-compliant - specify details:

_____

_____

Tenancies ☐ Applicable ☒ Not Applicable

Is the existing tenancy to continue after settlement? ☐ Yes ☐ No

If "No", the Vendor must provide vacant possession of the property to the Purchaser at settlement.

If "Yes", complete the tenancy details set out below:

Agreement type: ☐ Fixed term ☐ Periodic

Tenant(s): _____

Tenancy start date: _____ End date (if fixed term): _____

Rent amount: _____ per ☐ Week ☐ Fortnight ☐ Month ☐ Year

Bond with CBS ☐ Yes ☐ No

The Vendor or its representative is to advise the tenant of the Purchaser's name and new rent payment details at least 14 days before settlement.

Matters Affecting Title

(Only complete if a Form 1 is not served with the Contract and a 'cooling off' period is not applicable.) Detail all encumbrances (existing or intended to be created) not to be discharged prior to settlement.

_____

_____

_____

_____

SPECIAL CONDITIONS

(clause 14)

SC 1 FINANCE

SC 1.1 This Contract is conditional upon the Purchaser obtaining, on or before the date specified below, approval in writing for a loan in the amount specified below (or such lesser amount as the Purchaser may accept) at the interest rate specified below and otherwise on such terms and conditions that the lender requires but acceptable to the Purchaser, to assist in purchasing the property (the "approval"). Upon notification of the approval to the Vendor this conditional provision will be satisfied and notwithstanding that the lender may subsequently withdraw the approval the Purchaser will be bound by this Contract.

SC 1.2 The Purchaser will use best endeavours to obtain the loan.

SC 1.3 In the event that the approval is not obtained on or before the latest date for approval and provided the Purchaser has not waived this special condition and communicated such waiver to the Vendor in writing then either party (but, in the case of the Purchaser, provided it has complied with SC1.2) may immediately terminate this Contract by giving notice in writing to the other party.

SC 1.4 In the event of termination of the Contract pursuant to SC1.3 and provided the Purchaser has complied with SC1.2 all monies paid by or on behalf of the Purchaser will be repaid to the Purchaser.

SC 1.5 In the event of termination of this Contract pursuant to SC1.3 in circumstances where the Purchaser has failed to comply with SC1.2 the Vendor will be entitled to the deposit which is forfeited and to proceed against the Purchaser for damages for breach of Contract.

Latest Date for approval _____ by 5pm _____

Amount of Loan $ _____ (or less than) _____

Interest Rate _____ % per annum (or less than) _____

Property/s to be Secured _____

_____

SC 2 SALE OF THE PURCHASER'S PROPERTY

SC 2.1 *(* select the applicable option)*

Sale and Settlement

☐ Settlement under this Contract is conditional on the Purchaser:

(a) entering into a contract on or before _____ for the sale of property at:

_____ ('**Sale Contract**')

(b) for a price of not less than $ _____ or such lesser sum that the Purchaser accepts;

(c) the Sale Contract being unconditional on or before _____ (if applicable); and

(d) the Sale Contract settling on or before _____ .

Settlement

☐ Settlement under this Contract is conditional on the sale of the Purchaser's property at:

_____

_____

pursuant to a contract entered into by the Purchaser dated _____:

(a) being unconditional on or before _____ (if applicable); and

(b) settling on or before _____ .

SC 2.2 The Purchaser must:

(a) use its best endeavours to satisfy SC 2.1; and

(b) at the Vendor's reasonable request, promptly inform the Vendor on the status of satisfaction of SC 2.1.

SC 2.3 The Purchaser may waive this Special Condition by serving notice of its waiver on the Vendor.

SC 2.4 In the event that SC 2.1 is not satisfied or waived within the times agreed in SC 2.1, either party, and in the case of the Purchaser only where it has complied with SC 2.2. can immediately terminate this Contract by serving notice to the other party.

SC 2.5 In the event of termination of this Contract:

(a) by a party pursuant to SC 2.4, all monies paid by or on behalf of the Purchaser must be repaid to the Purchaser; or

(b) by the Vendor pursuant to General Condition 9.2 as a result of the Purchaser failing to comply with SC 2.2, the Vendor is entitled to the deposit without limitation to its other rights under this Contract.

OTHER CONDITIONS

(*rule off if this area is not needed*)

_____

_____

_____

GENERAL CONDITIONS

1. Encumbrances

The property is sold subject to and together with the encumbrances that are not to be discharged prior to settlement as detailed:

1.1 if a Form 1 is served before or contemporaneously with the execution of this Contract by the Purchaser, then as detailed in the Form 1; or

1.2 as detailed in this Contract under Matters Affecting Title in the Schedule.

2. Monies Payable Prior to Settlement

All monies payable by the Purchaser prior to the Settlement Date will be paid to the Vendor's agent or representative who will hold the monies as stakeholder pending settlement.

3. Settlement

3.1 Settlement will take place at the Land Services SA, or such other location as the parties will agree, on the Settlement Date.

3.2 The Purchaser will, not less than seven (7) days prior to the Settlement Date and at the Purchaser's expense tender a Transfer of the property to the Vendor. The Vendor may allow the Purchaser possession of the executed Transfer in escrow for stamping prior to settlement but for all purposes the Transfer will be the property of the Vendor.

3.3 At settlement, subject to the Vendor having performed all of the Vendor's obligations under the Contract up to settlement, the Purchaser will pay to the Vendor by bank cheques the balance of the Purchase Price and other monies payable by the Purchaser on settlement in exchange for the registration documents. If for any reason a cheque tendered at settlement is not paid on presentation, the Purchaser will re-convey the property to the Vendor. Prior to any reconveyance the unpaid amount of any cheque will be a charge on the property in favour of the Vendor.

3.4 The Purchaser will pay the cost of the first two (2) bank cheques required by the Vendor at settlement and the Vendor will pay the cost of any additional bank cheques required by it. Cheque details will be advised by the Vendor not less than two (2) business days prior to settlement.

3.5 Subject to clause 9.4(d) all outgoings and income relating to the property will be apportioned and adjusted as between the Vendor and Purchaser to midnight on the day prior to settlement. The Vendor will pay all outgoings up to the date of settlement and thereafter the Purchaser will pay all outgoings.

3.6 If at the date of settlement the property is connected to a sewer line and if any monies are or will become owing to the water authority or otherwise in respect of that connection, the amount of those monies will be paid by the Vendor on or before settlement.

3.7 The parties may settle under protest should there be any dispute as to the amount payable under the Contract at settlement.

4. Possession

4.1 Subject to the Purchaser having performed all of the Purchaser's obligations under the Contract, the Purchaser will be entitled to and the Vendor will give vacant possession of the property to the Purchaser subject only to any tenancies specified.

4.2 The Vendor will remove all excluded chattels and fixtures from the property prior to settlement and make good any damage caused.

4.3 The Vendor will carry out any works as detailed in the Schedule (Vendor's Works) in a proper and workman like manner prior to the Settlement Date.

4.4 The Purchaser is not entitled to access to the property until settlement unless agreed to in writing by the Vendor.

4.5 In the event the Purchaser is granted possession prior to Settlement Date the Purchaser will execute a licence agreement with the Vendor prior to taking possession and any breach of the terms of such a licence agreement will be deemed a default under the Contract and subject to the Vendor's rights to termination pursuant to clause 9.2.

5. Purchaser's Risk

The property will be at the risk of the Purchaser from the date of this Contract and without limiting the effect the Purchaser is obliged to meet the cost of any repairs or loss (including but not limited to) for any electrical, mechanical or structural problems existing after the date of the Contract. The Vendor will notify the Purchaser of any breakdown or damage to the property needing attention within a reasonable time. The Vendor will reasonably maintain and use the property until settlement but is not liable for repairs or breakdown costs unless caused by the Vendor's negligence. The Purchaser buys the property subject to the notified works in the Schedule above.

6. Vendor's Warranties

There are not within the Vendor's knowledge except as stated in this Contract and in the Form 1:

6.1 any outstanding or impending demands, orders or requisitions of any competent authority relating to the property;

6.2 any proposals for the re-alignment, widening or alteration of the level of any road adjoining the property by any competent authority that would materially affect the property or the use thereof;

6.3 except in relation to a strata unit or community lot or as detailed in the certificate of title, any sewers, drains, pipes, cables or other installations passing through the property providing the relevant services to other land;

6.4 any outstanding or impending notice, demand or liability to join in or contribute to the construction or repair of a dividing fence between the property and any adjoining land under the *Fences Act* or otherwise;

6.5 any encroachments onto the property by any building or structure from the adjoining land;

6.6 any amounts owing to any competent authority in respect of works performed or to be performed or any expenses incurred or to be incurred by the authority in relation to the property;

6.7 any notice of resumption or intended resumption of the property or any part thereof by any competent authority; or

6.8 any buildings and improvements which are not on or within the boundaries of the property and so far as the Vendor is aware, all dividing fences and walls are on the boundaries of the property.

Farming Provisions [if Rural Property]

6.9 The Vendor will work, maintain and farm the property from the date of this Contract until settlement in accordance with accepted rural management practices and will not increase the livestock numbers except by way of natural increase.

6.10 No warranty is given that the fences are on or within the boundaries of the property.

6.11 The Vendor will maintain all livestock in accordance with accepted husbandry and rural management practices.

6.12 Where the property is partially or wholly the subject of a lease then the Vendor warrants that at settlement all terms and conditions will be complied with and up to the date of settlement all monies due thereunder will be paid and satisfied.

6.13 Where livestock is included in this Contract the agent or its nominee will audit the number of stock sold in accordance with accepted practices and the price will be adjusted accordingly.

7. Warranties if Property is subject of Strata or Community Title

In addition to the warranties in clause 6, where the property is a strata unit or community lot there are not within the Vendor's knowledge except as stated in the Form 1:

7.1 any facts or circumstances relating to the common property that will materially affect the Purchaser's use or enjoyment of the property or the common property except those mentioned in the Contract or disclosed to the Purchaser in writing prior to the date of this Contract, or apparent on inspection or mentioned in the strata or community plan or a schedule;

7.2 any current or pending proceedings relating to the strata or community corporation or to the strata unit or community lot and there are no unsatisfied judgments or orders against the strata or community corporation;

7.3 any proposals for or any proceedings or procedures initiated for the variation of the schedule of entitlement in respect of the strata or community corporation or community lot/strata unit, the grant, variation or surrender of any easements or restrictive covenants which affect the land, or the transfer, lease or licence of any part of the common property; and

7.4 any current or impending proposals to pass any special resolutions of the strata or community corporation or to pass any resolution of the strata or community corporation and the Vendor undertakes to advise the Purchaser of any and all pending meetings and proposals relating to the strata or community corporation not less than seven (7) days prior to any formal meeting and warrants that it will vote only in accordance with the directions of the Purchaser.

8. Misdescription

This Contract will not be terminated for any error or misdescription of the property but the Purchaser will be entitled to seek compensation from the Vendor for any loss or damage arising from the error or misdescription subject to any claim being notified and demanded within fourteen (14) days of settlement.

9. Default by Purchaser

9.1 **Default in Payment of Deposit**

Notwithstanding any other provision of this Contract, in the event the Purchaser fails to pay all or any part of the deposit by the date specified then the Vendor will be entitled to immediately terminate the Contract without prior notice.

9.2 **Default by Purchaser Prior to Settlement**

In the event the Purchaser is in default in performing or observing any obligation imposed on the Purchaser under this Contract prior to settlement then the Vendor, in addition to any other rights or remedies it may have under this Contract or otherwise, may give the Purchaser notice in writing requiring the Purchaser to remedy the default within seven (7) days from service of the notice. If the Purchaser fails to comply with the notice the Vendor may terminate the Contract by further written notice without prejudice to the Vendor's rights and entitlements at law. The Vendor will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

9.3 **Default by Purchaser in Settlement**

In the event the Purchaser defaults in the due observance or performance of the obligations on the Purchaser's part to settle and such default continues for a period of three (3) clear business days after the Settlement Date then the Vendor may serve a notice on the Purchaser requiring the default to be remedied and appointing a time for settlement being not less than three (3) clear business days after the service of the notice requiring the Purchaser to settle at the time and date appointed in the notice. If the Purchaser fails to comply with the notice the Vendor may terminate the Contract by further written notice without prejudice to the Vendor's rights and entitlements at law. The Vendor will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

9.4 **Remedies of Vendor**

(a) In the event this Contract is terminated by the Vendor then the Vendor may either retain the property or sell the property and in either event sue the Purchaser for damages.

(b) The Vendor will be entitled to retain the deposit if this Contract is terminated by the Vendor.

(c) If the Vendor re-sells the property the Vendor may retain absolutely any surplus arising from such re-sale in excess of the original Purchase Price and expenses arising from the re-sale and all losses and expenses incurred by the Vendor resulting from the Purchaser's default.

(d) In the event this Contract settles on a date after the date for settlement first agreed to by the parties and as stated in the Contract (and whether or not subsequently varied by agreement) and provided that the delay in settlement is not due to the Vendor's default, the Purchaser will pay at settlement, if demanded by the Vendor, interest on the Purchase Price at the default rate for the period between the date for settlement first agreed and the date of actual settlement. In this event, at settlement all outgoings and income on the property shall be apportioned and adjusted to midnight on the day before the date for agreed settlement.

10. Default by Vendor

In the event the Vendor defaults in performing or observing any obligations or duties under the Contract and such default continues for a period of three (3) business days after the Settlement Date then the Purchaser in addition to any rights at law may serve a notice on the Vendor requiring the Vendor to remedy the breach within three (3) clear business days from service of the notice. If the Vendor fails to comply with the notice the Purchaser may terminate this Contract by further written notice without prejudice to the Purchaser's rights and entitlements at law. The Purchaser will be entitled to serve more than one notice without prejudice to any of its rights and obligations.

11. Payment of Deposit to Vendor and Payment into Court

In the event the Vendor is entitled to the deposit pursuant to clause 9.4(b) above then the stakeholder is expressly authorised and directed by the Purchaser and the Vendor to pay the deposit to the Vendor subject to seven(7) clear business days prior notice being given to the Purchaser of the direction to the stakeholder from the Vendor (the "Release Notice"). The Release Notice is to state that the Vendor is entitled to the deposit which will be paid out unless a legal action is commenced by the Purchaser and served on both the Vendor and stakeholder within that period. If the Purchaser does not issue a proceeding and serve it on the stakeholder then the stakeholder will release the deposit under the Contract to the Vendor immediately on the expiry of the Release Notice period.

Subject to the above provision and in the event of a proceeding being instituted between the Purchaser and the Vendor in relation to the Contract and the deposit then the stakeholder (subject to the deposit not having already released as above) will pay the monies into court.

"stakeholder" means and includes without limiting each the Agent, lawyer or conveyancer of the Vendor who may hold the deposit or part thereof. "deposit" means and includes cash, a deposit bond (if any) and or bank guarantee.

12. Arbitration

Any dispute involving the sum of $100,000 or less will be determined by an independent arbitrator appointed by the President of the Law Society of South Australia, or his or her nominee, at the request of either party. The determination of the arbitrator will be final and binding between the parties and the provisions of the *Commercial Arbitration Act 2011* (SA) will apply. The costs of arbitration will be paid by such party/s as directed by the arbitrator. The arbitrator will advise of procedures and will request payment of reasonable fees prior to acting and in default of payment may refuse to act. Any appeals against an award must comply with section 34A of the *Commercial Arbitration Act 2011* (SA).

13. Notices, Service and Interest for Late Settlement

13.1 Subject to other provisions allowing immediate termination, neither the Vendor nor the Purchaser will be entitled to terminate this Contract on the ground of the other's default in performing or observing an obligation imposed on that other party under the Contract; unless
  (a) the party not in default has first given to the party in default a written notice specifying the default complained of, which notice will require that the default be remedied within the period stipulated in the notice; and
  (b) the party in default fails to remedy the default within the period stipulated in that notice.

13.2 The Vendor may at any time serve a demand on the Purchaser certifying the amount due by way of principal and interest which interest will be calculated on a daily rate from the day following the day that any monies were due and payable under the Contract (without serving any prior notices) and interest may be stated as a continuing daily rate. The Purchaser will pay interest to the Vendor at the default rate (as defined) on monies due and payable under the Contract but unpaid from the date the monies first fell due under the Contract until date of payment.

13.3 The Purchaser will pay $550.00 (inc GST) to the Vendor's solicitor or conveyancer for the cost of preparation and service of each default notice under the Contract which monies will, together with interest at the default rate (if due), be added to and thereafter be deemed to be part of the purchase price. The Vendor will pay $550 (inc GST) to the Purchaser's solicitor or conveyancer for each notice served under this Contract arising from a failure in settlement by the Vendor.

13.4 A notice served by registered mail will for all purposes be deemed served two (2) clear business days after posting.

13.5 Service may be effected by email or facsimile transmission to the party or the party's representative to such facsimile number advised from time to time such service being deemed immediate service.

13.6 Service on one or more of the persons together comprising the Vendor or Purchaser as the case may be will for all purposes be deemed service on all persons comprising the Vendor or Purchaser.

13.7 Service may be effected personally, by email or facsimile or by registered mail to the address of the person detailed in the Contract or the representative of the party.

13.8 Where a party is entitled to immediately terminate the Contract, such termination is to be effected by service on the other party of a written notice to that effect.

14. Time of the Essence

Time will be of the essence of this Contract in respect of any obligation under clauses 9, 10, 13 and all special conditions.

15. Costs and Stamp Duty

Each party will bear its own legal and other costs and expenses in entering into this Contract and settlement except as otherwise specified in damages and the Purchaser will pay all stamp duty assessed on the Contract and on the transfer to the Purchaser.

16. Legal Capacity of Purchaser

The Purchaser and each of them warrant that all natural persons included in the description of Purchaser are 18 years of age and are not under any legal disability. The Purchaser further warrants that if executing as attorney or as a nominee that they are validly appointed and have not received notice of any withdrawal of power.

17. Further Assurance and Best Endeavours

Both the Vendor and the Purchaser will each use their best endeavours to deal with any "requisition notice" issued by the Land Services SA and to comply with any condition of this Contract. Subject to the Purchaser having performed all of the Purchaser's obligations under the Contract, the Vendor will with all reasonable dispatch do all things necessary to enable a registrable transfer of the property to be lodged and registered.

18. No Merger

The provisions of the Contract continue for all purposes to subsist after settlement.

19. Debits Tax and Special Land Services SA Fees

In the event the deposit is repaid or to be repaid to the Purchaser for any purpose then the Purchaser will pay to the agent or other person holding the monies as stakeholder such sum equal to the government charges dutiable against the monies under the *Debits Tax Act 1994* (SA) or such other similar Acts in force from time to time and amendments thereof and it will be lawful and it is agreed that the stakeholder may retain from the deposit monies held such monies equal to the taxes and levies charged against the deposit and apply them to the taxes accounting to the Purchaser for the balance. The Purchaser will pay any special charges of the Land Services SA Registration Office levied for settlements occurring on particular days.

20. Foreign Investor

The Purchaser warrants that it does not require approval from the Foreign Investment Review Board (or any similar organisation) for the purchase unless otherwise specified.

21. GST General

21.1 **General**

(a) Terms used in this clause and in the GST Conditions of Sale have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('**the GST Act**'), unless the context otherwise requires.

(b) This clause survives completion.

(c) If the sale of the Property constitutes a mixed supply (for example, the sale is an input taxed supply only in part, or the margin scheme applies only in part, or full GST applies only in part) then the Vendor shall reasonably determine the consideration for the sale of each part, and these clauses shall apply as if the Property being supplied is that part only.

21.2 **Sale is Input Taxed – and Residential**

If the sale of the Property is residential premises which is input taxed, the Purchaser warrants that the Property is to be used predominantly for residential accommodation.

21.3 **If GST is to be added**

If GST is to be added to the Purchase Price for the Property AND

(a) The GST Conditions of Sale provide that the margin scheme is to be applied to the sale of the Property:

(i) the Vendor warrants that the Property was not acquired through a taxable supply in which the margin scheme did not apply;

(ii) the Vendor must obtain, at the Purchaser's expense, a valuation (if applicable) of the Property which complies with section 75-10(3) of the GST Act, and provide that valuation to the Purchaser not less than seven (7) days prior to settlement;

(iii) the Purchaser must pay to the Vendor an additional amount on account of GST equal to 10% of the margin at settlement, together with any costs incurred by the Vendor in relation to the valuation; and

(iv) the Vendor must choose to apply the margin scheme to the sale of the Property in completing its Business Activity Statement;

OR

(b) The GST Conditions of Sale provide that the margin scheme will not be applied to the sale of the Property:

(i) the Purchaser must pay to the Vendor an additional amount on account of GST equal to the consideration for the sale of the Property multiplied by the GST rate applicable; and

(ii) the Vendor must provide to the Purchaser a tax invoice in relation to the sale of the Property at settlement.

21.4 **If GST is not to be added**

If GST is not to be added to the Purchase Price for the Property AND

(a) The GST Conditions of Sale provide that the margin scheme is to be applied to the sale of the Property:

(i) the Vendor warrants that the Property was not acquired through a taxable supply in which the margin scheme did not apply;

(ii) the Vendor must obtain, at the Vendor's expense, a valuation (if applicable) of the Property which complies with section 75-10(3) of the GST Act and provide that valuation to the Purchaser not less than seven (7) days prior to settlement; and

(iii) the Vendor must choose to apply the margin scheme to the sale of the Property in completing its Business Activity Statement.

21.5 **Full GST**

If the sale of the Property is subject to GST and the margin scheme is not to be applied:

(a) the Purchaser must pay to the Vendor at settlement an additional amount on account of GST equal to the consideration for the sale of the Property multiplied by the GST rate applicable; and

(b) the Vendor must provide to the Purchaser a tax invoice in relation to the sale of the Property at settlement.

21.6 **Going Concern**

If the Property is to be sold as a going concern:

(a) the Purchaser warrants that it is registered or required to be registered for GST and shall (if requested) provide evidence to that effect to the reasonable satisfaction of the Vendor at settlement;

(b) the Vendor warrants that it shall carry on the enterprise to which the sale of the Property relates until settlement;

(c) the Vendor and Purchaser agree to treat the sale of the Property as the supply of a going concern;

(d) if the Purchaser assigns this Contract at any time prior to settlement, the assignee shall, as a condition of the assignment, be bound by the same warranties and agreement referred to in this sub-clause as applies to the Purchaser; and

(e) if for any reason the sale of the Property is not the supply of a going concern, other than by reason of a breach by the Vendor of this clause, the Purchaser shall pay to the Vendor on written demand all GST, interest, penalties, costs and damages incurred by the Vendor in respect of the sale of the Property.

21.7 **Farm land**

If the Property is the supply of farm land:

(a) the Vendor warrants that the Property has been used in carrying on a farming business for at least the period of five (5) years preceding the sale;

(b) the Purchaser warrants that it intends that a farming business be carried on, on the Property; and

(c) if for any reason the sale of the Property is not GST-free, other than by reason of a breach by the Vendor of this clause, the Purchaser shall pay to the Vendor on written demand all GST, interest, penalties, costs and damages incurred by the Vendor in respect of the sale of the Property.

22. Crown Lease

When the property is wholly or partially held under a Crown Lease:

22.1 the property is sold subject to the terms and conditions of the Crown Lease;

22.2 the Crown Lease will be taken to have been validly granted and production of the receipt for the current year's rent (or instalment of rent) will be accepted by the Purchaser as sufficient proof that all the terms of the Crown lease have been observed; and

22.3 if the consent of the Minister or other authority to the transfer of lease of the property is required, then the Vendor and the Purchaser must apply for and use their best endeavours to obtain that consent as soon as possible. If consent is refused then this Contract is automatically determined, and all costs and expenses of and incidental to the application for the consent will be borne by the Purchaser. The Vendor may deduct any such expenses from any deposit held.

23. Vendor Finance and Exclusion of Nominee

If the whole or any portion of the purchase price is to be financed by the Vendor, then notwithstanding anything else contained in this Contract the Purchaser is not entitled to appoint a nominee or nominees or assign this Contract or any part thereof without the prior written consent of the Vendor. The Vendor will not unreasonably withhold consent but may reasonably require that the Purchaser give the Vendor a guarantee for the payment of all monies as may become due and payable to the Vendor by any mortgagor and for the due performance of the mortgagor's obligations under any mortgage (such guarantees and mortgages to be prepared and stamped by the Vendor's solicitors and all costs payable by the Purchaser).

24. Leases [commercial property]

At any time whether before or after settlement the Vendor or the Purchaser may give notice to the other party requiring that the parties enter into a formal Deed of Assignment ('Deed') and or transfer of the leases and or agreements relating to any tenancies (if any). The Deed or transfers will be prepared by the party who requests same with the cost of preparation of such Deed or transfers to be payable by that party and subject to being in normal commercial terms the parties will execute the same. Prior to settlement the Vendor will not vary or agree to any extensions of leases without first seeking the consent of the Purchaser.

25. Release of Security Interests

25.1 This provision applies if any part of the property is subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) ('**the PPS Act**') applies.

25.2 The Vendor must ensure that at or before settlement, the Purchaser receives:

(a) a release from the secured party releasing the security interest in respect of the property; or

(b) a statement in writing in accordance with section 275(1)(b) of the PPS Act setting out that the amount or obligation that is secured is nil at the due date for settlement; or

(c) a written approval or correction in accordance with section 275(1)(c) of the PPS Act indicating that, on the due date for settlement, the personal property included in the contract is not or will not be property in which the security interest is granted

if the security interest is registered in the Personal Properties Securities Register.

25.3 The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any personal property that is sold in the ordinary course of the Vendor's business of selling personal property of that kind unless, in the case of goods that may or must be described by a serial number in the Personal Properties Securities Register, the Purchaser advises the Vendor at least twenty-one (21) days before the due date for settlement that the goods are to be held as inventory.

25.4 The Vendor is not obliged to ensure that the Purchaser receives a release, statement, approval or correction in respect of any personal property that:

(a) is not described by serial number in the Personal Property Securities Register; and

(b) is predominantly used for personal, domestic or household purposes; and

(c) has a market value of not more than $5,000 or, if a greater amount has been prescribed for the purposes of section 47(1) of the PPS Act, not more than that prescribed amount.

25.5 A release for the purposes of this clause 25.2(a) must be in writing and in a form published by the a professional legal body, Law Council of Australia or the Australian Bankers Association or in a form acceptable to the Vendor in its discretion or published under the PPS Act.

25.6 If the Purchaser receives a release under clause 25.2(a), the Purchaser must provide the Vendor with a copy of the release at or as soon as practicable after settlement.

25.7 In addition to ensuring a release is received under clause 25.2(a), the Vendor must ensure that at or before settlement, the Purchaser receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes goods of a kind that are described by serial number in the Personal Property Securities Register.

25.8 The Purchaser must advise the Vendor of any security interest that the Purchaser reasonably requires to be released at least twenty-one (21) days before the due date for settlement.

25.9 Words and phrases used in this clause which are defined in the *Personal Property Securities Act 2009* (Cth) have the same meaning in this clause.

26. Electronic Conveyancing & Confirmation to Use

The parties may use electronic conveyancing procedures and may mutually agree in writing to use electronic conveyancing and will discuss and confirm these procedures for settlement upon first communicating with each other by their conveyancers and or lawyers once the contract is finalised. Upon agreement by their conveyancers and lawyers to proceed using electronic conveyancing then the following provisions apply. Settlement and lodgement will be conducted electronically in accordance with the Electronic Conveyancing National Law and this special condition applies.

26.1 This condition has priority over any other provision to the extent of any inconsistency. This condition applies if the contract of sale specifies, or the parties subsequently agree in writing, that settlement and lodgement of the instruments necessary to record the Purchaser as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law.

26.2 A party must immediately give written notice if that party reasonably believes that settlement and lodgement can no longer be conducted electronically then this condition ceases to apply from when such notice is given. No party is obliged to agree to electronic conveyancing.

26.3 Each party must:

(a) be, or engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law,

(b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law, and

(c) conduct the transaction in accordance with the Electronic Conveyancing National Law.

26.4 The Vendor must open the Electronic Workspace ("workspace") as soon as reasonably practicable. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transactions legislation.

26.5 The Vendor must nominate a time of the day for locking of the workspace at least seven (7) days before the due date for settlement.

26.6 Settlement occurs when the workspace records that:

(a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or

(b) if there is no exchange of funds or value, the documents necessary to enable the Purchaser to become registered proprietor of the land have been accepted for electronic lodgement.

26.7 The parties must do everything reasonably necessary to effect settlement:

(a) electronically on the next business day, or

(b) at the option of either party, otherwise than electronically as soon as possible – if, after the locking of the workspace at the nominated settlement time, settlement in accordance with special condition 26.6 has not occurred by 4.00pm, or 6.00pm if the nominated time for settlement is after 4.00pm.

26.8 Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any mistaken payment and to recover the mistaken payment.

26.9 The Vendor must before settlement:

(a) deliver any keys, security devices and codes ("keys") to the estate agent named in the contract,

(b) direct the estate agent to give the keys to the Purchaser or the Purchaser's nominee on notification of settlement by the Vendor, the Vendor's subscriber or the Electronic Network Operator;

(c) deliver all other physical documents and items (other than the goods sold by the Contract) to which the Purchaser is entitled at settlement, and any keys if not delivered to the estate agent, to the Vendor's subscriber or, if there is no Vendor's subscriber, confirm in writing to the Purchaser that the Vendor holds those documents, items and keys at the Vendor's address set out in the Contract, and

(d) direct the Vendor's subscriber to (or, if there is no Vendor's subscriber) give all those documents and items, and any such keys, to the Purchaser or the Purchaser's nominee on notification of settlement by the Electronic Network Operator.

26.10 The Vendor must, at least seven (7) days before the due date for settlement, provide the original of any transfer and duty documents required to be prepared or executed by the Vendor in accordance with the General Conditions in this Contract.

27. Foreign Resident Capital Gains Withholding

27.1 Words defined or used in Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) ('**the Tax Act**') have the same meaning in this clause unless the context requires otherwise.

27.2 Every Vendor under this Contract is a foreign resident for the purposes of this clause unless the Vendor gives the Purchaser a clearance certificate issued by the Commissioner under section 14-220 (1) of Schedule 1 to the Tax Act. The specified period in the clearance certificate must include the actual date of settlement.

27.3 This clause only applies if the Purchaser is required to pay the Commissioner an amount in accordance with sections 14-200 or 14-235 of Schedule 1 to the Tax Act ('**the amount**') because one or more of the Vendors is a foreign resident and the transaction is not excluded under section 14-215(1) of Schedule 1 to the Tax Act.

27.4 The amount is to be deducted from the Vendor's entitlement to the Contract consideration. The Vendor must pay to the Purchaser at settlement such part of the amount as is represented by non-monetary consideration.

27.5 The Purchaser must:

(a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the Purchaser's obligations in this clause; and

(b) ensure that the representative does so.

27.6 The terms of the representative's engagement are taken to include instructions to have regard to the Vendor's interests and instructions that the representative must:

(a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this clause if the sale of the property settles;

(b) promptly provide the Vendor with proof of payment; and

(c) otherwise comply, or ensure compliance with, this clause;

despite:

(d) any contrary instructions, other than from both the Purchaser and the Vendor; and

(e) any other provision in this Contract to the contrary.

27.7 The representative is taken to have complied with the obligations in clause 27.6 if:

(a) the settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd (PEXA) or any other electronic conveyancing system agreed by the parties; and

(b) the amount is included in the settlement statement requiring payment to the Commissioner in respect of this transaction.

27.8 Any clearance certificate or document evidencing variation of the amount in accordance with section 14-235(2) of Schedule 1 to the Tax Act must be given to the Purchaser at least 5 business days before the due date for settlement.

27.9 The Vendor must provide the Purchaser with such information as the Purchaser requires to comply with the Purchaser's obligation to pay the amount in accordance with section 14-200 of Schedule 1 to the Tax Act. The information must be provided within five (5) business days of request by the Purchaser. The Vendor warrants that the information the Vendor provides is true and correct.

27.10 The Purchaser will be and is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount.

28. GST Withholding Tax

28.1 Words defined or used in Subdivision 14-E of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (the '**Tax Act**') have the same meaning in this clause unless the context requires otherwise.

28.2 This clause applies if:

(a) The Contract was entered into:

(i) On or after 1 July 2018; or

(ii) Prior to 1 July 2018 if consideration (excluding the Deposit) is provided after 30 June 2020;

(b) The Property (or part of the Property) constitutes:

(i) new residential premises which have not been created through substantial renovation of a building or do not constitute commercial residential premises; or

(ii) potential residential land which is included in a property subdivision plan and does not contain any building which is used for a commercial purpose;

(c) If the Property constitutes potential residential land, the Purchaser:

(i) is not registered for GST; or

(ii) will not acquire the Property for a creditable purpose; and

(d) The supply of the Property does not constitute a supply which has been excluded from the application of Subdivision 14-E of Schedule 1 to the Tax Act by virtue of a statutory declaration made by the Commissioner in accordance with Section 14-250(3) of Schedule 1 to the Tax Act.

28.3 At least 14 days before the relevant date in clause 28.4, the Vendor must provide to the Purchaser a notice which complies in all respects with section 14-255(1) of Schedule 1 to the Tax Act ('**notice**').

28.4 The Purchaser must pay to the Commissioner the amount set out in the notice ("amount") on or before:
(a) the day on which it pays any consideration (excluding the Deposit) to the Vendor for the Property;
(b) if the Vendor and Purchaser are associates and no consideration is to be provided, the day on which the Property is supplied to the Purchaser; or
(c) such other date determined by the Commissioner in accordance with section 14-250(5) of Schedule 1 to the Tax Act.

Note: the Purchaser's obligation to withhold and pay an amount to the Commissioner is not avoided if the Vendor fails to serve a notice.

28.5 If the amount is not due prior to settlement, the Purchaser is taken to have complied with its obligations in clause 28.4 if:
(a) settlement is conducted through the electronic conveyancing system operated by Property Exchange Australia Ltd (PEXA) or any other electronic conveyancing system agreed by the parties and the amount is paid to the Commissioner via this electronic conveyancing system; or
(b) the Purchaser provides the Vendor with a bank cheque made payable to the Commissioner for the amount payable to the Commissioner. If this occurs, the Vendor must provide such cheque to the Commissioner as soon as possible.

28.6 The amount is to be deducted from the Vendor's entitlement to the Contract consideration.

28.7 The Purchaser will be and is responsible for any penalties or interest payable to the Commissioner on account of late payment of the amount save if caused directly or indirectly by the Vendor.

28.8 The Purchaser must:
(a) engage a legal practitioner or conveyancer ("representative") to conduct all the legal aspects of settlement, including the performance of the Purchaser's obligations in this clause; and
(b) ensure that the representative does so.

28.9 The terms of the representative's engagement are taken to include instructions to have regard to the Vendor's interests and instructions that the representative must:
(a) pay, or ensure payment of, the amount to the Commissioner in the manner required by the Commissioner and as soon as reasonably and practicably possible, from moneys under the control or direction of the representative in accordance with this clause if the sale of the property settles;
(b) promptly provide the Vendor with proof of payment; and
(c) otherwise comply, or ensure compliance with, this clause;
despite
(d) any contrary instructions, other than from both the Purchaser and the Vendor; and
(e) any other provision in this Contract to the contrary.

In this clause references above or if marked * are as detailed and have the same meanings as in the Tax Act and in the GST Act (as defined in these General Conditions earlier).

29. Counterparts

This Contract may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract. Without limiting the foregoing, if the signatures on behalf of one party are on different counterparts, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Contract.

Interpretation

In these Conditions unless the Contract otherwise requires:

'**Act**' means the *Land and Business (Sale and Conveyancing) Act 1994* (SA) as amended from time to time;

'**agent**' means the agent for the Vendor registered under the *Land Agents Act 1994* (SA);

'**business day**' means any day other than a Saturday, Sunday or public holiday in South Australia;

'**community lot**' means a community lot or community strata lot in a Community Plan deposited or intended to be deposited at the Land Services SA;

'**default notice**' means a notice given pursuant to clauses 9, 10 and/or 13.1;

'**default rate**' means the rate of interest published by the Reserve Bank of Australia for the cash rate, on the day of the default first occurring or on the date of settlement, plus five (5) percentage points, or at the Vendor's election the Vendor's then commercial banking overdraft rate plus two (2) percentage points; and for all purposes the parties agree these are reasonable estimations of the cost of or loss of use of money to the Vendor and damages. A statement from the representative of the party, being a calculation of interest will be prima facie evidence of the rate and will be deemed the amount of interest payable;

'**deposit**' means the amount detailed in this Contract as payable for a deposit and may include a 'Deposit Guarantee' or 'Deposit Bond' in the Vendor's discretion which are guarantees by a registered insurance company or bank to pay to the Agent or Vendor an amount agreed as the deposit in the event of a default in settlement by the Purchaser;

'**encumbrance**' includes a mortgage, charge, bill of sale, lien, pledge, easement, restrictive covenant, building condition, writ, warrant, caveat and the claim stated, or other right or interest affecting the property or any part of the property;

'**Form 1**' means the Form 1, under the Act;

'**income**' means all rent, benefits and other moneys received or receivable directly arising from the rights and use of the property;

'**land**' means the freehold land (including a strata unit or community lot) or leasehold land, together with all buildings and other improvements including all Vendor's fixtures and fittings the subject of the Contract detailed in this Contract;

'**latest date for approval**' means, if the Contract is subject to the approval of a loan, 5.00pm on the day specified in this Contract as 'the latest date for approval' in respect of such loan;

'**other property**' means the chattels and personal items (if any) described in the Contract and agreed to be sold;

'**outgoings**' means and includes:

(a) all rates, taxes, levies, assessments and charges or other outgoings (periodical or otherwise) chargeable or payable in respect of the property; and

(b) if the property is or includes a strata unit or community lot;

(i) all contributions in respect thereof levied by the strata corporation payable under the *Strata Titles Act 1988* (SA) or by the Community Corporation under the *Community Titles Act 1996* (SA) and if there is no fund or there are insufficient funds or if the Vendor is in default or arrears of payments then the Vendor will pay to the Purchaser in proportion of the Vendors liability for unit entitlement moneys adjusted to equal the Vendor's liability for contributions to the strata or community fund; and

(ii) all rents, fees and other periodical amounts payable under any lease, licence or agreement; and

(c) land tax which will be adjusted on the basis that the land constitutes a single holding; and

(d) water consumption which will be adjusted on the pro rata daily rate of the current water consumption rates and any consumption and charges will be adjusted prior to settlement or otherwise so soon as is practical after settlement and the Vendor will pay for any water use in proportion to the consumption year up to settlement.

'**person**' will mean and include a corporation;

'**property**' means the land described on page 1 together with any chattels agreed to be sold;

'**registration documents**' means a transfer in registrable form for the Land Services SA together with any applications, transfers, instruments, declarations or documents required to be tendered at the settlement to enable the conveyance of clear title;

'**representative**' means the agent, solicitor or conveyancer acting for the party concerned;

'**Settlement Date**' means the date set out in this Contract;

'**special condition**' means all the provisions in this Contract so titled and or in any annexure attached so titled; and

'**strata unit**' means a unit on a strata plan registered at the Land Services SA.

A reference to an Act of Parliament or to a section of an Act includes any amendment or re-enactment for the time being in force. Where two (2) or more persons are named in this Contract as the Vendor or the Purchaser, their liability under this Contract is joint and several. Where the day or last day for doing an act is not a business day, the day or last day for doing the act will be deemed to be the next following business day.

EXECUTED as an agreement

PURCHASER	**WITNESS**	**DATE**
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
VENDOR	**WITNESS**	**DATE**
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ACKNOWLEDGEMENT AND CONSENT

The parties acknowledge and consent to each signing this document (and any notices given under this document or legislation) themselves, or by their attorneys and/or representatives, by electronic an d/or digital signatures pursuant to the *Electronic Communications Act 2000* (SA) and the *Electronic Transactions Act 1999* (Cth) as applicable, and delivering this document and giving and receiving any communications relating to this document electronically.

☐ **Vendor is Owner** ☐ Vendor is Attorney/Executor/Administrator for...

☐ **Vendor is Mortgagee** (in possession to sell) ☒ As Authorised Director for ASTA INVESTMENT FUND PTY. LTD. (A

VENDOR by the Agent or Auctioneer if sold at auction **DATE**

_____ _____

AUCTION CONDITIONS

The Public Auction of Real Property Terms and Conditions of the Real Estate Institute of South Australia and Society of Auctioneers and Appraisers SA Inc., exhibited prior to the auction, will apply to the Contract. If sold by auction then the deposit of 10% of the Purchase Price (or such other amount notified by the auctioneer or agent prior to the auction) is payable in cash or by cheque immediately upon the successful acceptance of the bid unless a Deposit Guarantee or Deposit Bond is accepted by the Vendor in the Vendor's discretion and delivered on acceptance of this Contract. The Vendor is not bound to accept any Deposit Guarantee or Deposit Bond.

NOTE

There is no "cooling off" period under the Act if purchased at auction or if the Purchaser bids at the auction and enters into a contract that day or if the Purchaser waives the "cooling off" period (Section 5 of the Act).

PRIVACY STATEMENT

The Agent uses personal information collected from you to act as your Agent and to perform its obligations under this Agreement. The Agent may also use such information collected to promote the services of the Agent and/or seek potential clients. The Agent may disclose information to other parties including media organisations on the internet to potential tenants, or to clients of the Agent both existing and potential as well as tradespersons, owners corporations, government and statutory bodies and to other parties as required by law. The Agent will only disclose information in this way to other parties as required to perform their duties under this Agreement for the purposes specified above or as otherwise allowed under the *Privacy Act 1988* (Cth). If you would like to access this information you can do so by contacting the Agent at the address and contact numbers in this Agreement. You can correct any information if it is inaccurate, incomplete or out-of date. Real estate and tax law requires some of this information to be collected.