

## ADDITIONAL SPECIAL CLAUSE – FOREIGN RESIDENT WITHHOLDING TAX

- (a) For the purposes of this Additional Special Clause:

“**ATO Clearance Certificate**” means a certificate issued under s14-220(1) of the Withholding Law which is current on the date of completion of this Contract;

“**CGT Withholding Amount**” means the amount determined under s14-200(3) (a) of the Withholding Law or, if a copy is provided to the Purchaser prior to completion of this Contract, a lesser amount specified in a variation notice under s14-235 of the Withholding Law; and

“**Withholding Law**” means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.

- (b) This Additional Special Clause applies (despite any other provision of this Contract) if;

- (i) The market value of the Property at the Contract Date is \$2,000,000.00 or more and this sale is not otherwise an excluded transaction under s14-215 of *the Withholding Law*; and
- (ii) The Vendor has not given to the Purchaser on or before completion of this Contract for each person comprising the Vendor:
  - A. An ATO Clearance Certificate; or
  - B. A variation notice under s14-235 of *the Withholding Law* which remains current at the date of completion of this Contract varying the CGT Withholding Amount to nil.

- (c) If this Additional Special Clause applies then:

- (i) The Purchaser must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the Australian Taxation Office for each person comprising the Purchaser and give copies to the Vendor with the payment reference numbers (PRN) on or before completion of this Contract;
- (ii) The Purchaser or the Purchaser’s duly authorised representative must on completion of this Contract:
  - A. Show to the Vendor or the Vendor’s duly authorised representative a cheque drawn by a bank for the CGT Withholding Amount payable to the Deputy Commissioner of Taxation and provide to the Vendor or the Vendor’s duly authorised representative a photocopy of that cheque; or
  - B. Provide to the Vendor or the Vendor’s duly authorised representation such other assurance that payment of the CGT Withholding Amount will be made as may be approved and accepted by or on behalf of the Vendor.
- (iii) The Purchaser must pay the CGT Withholding Amount to the Australian Taxation Office and give the Vendor within two (2) business days of completion of this Contract evidence that it has done so;

and the monies otherwise payable by the Purchaser to the Vendor upon completion of this Contract will be reduced by the amount of the CGT Withholding Amount.

- (d) For the purposes of this Additional Special Clause the market value of the Property is taken to be the Contract Price less any GST included in the Contract Price for which the Purchaser is entitled to an input tax credit unless:

- (i) The Contract Price is for assets in addition to the Property; and
- (ii) No later than two (2) business days prior to the date of completion of this Contract, the Vendor gives to the Purchaser a valuation of the Property as at the Contract Date prepared by a registered valuer;

in which case the market value of the Property will be as stated in the valuation.