

THIS AGREEMENT is made the date set out at Item 1 of Schedule A to this Agreement (“Date of Agreement”)

BETWEEN:

KUDO HOMES PTY LTD (ACN 21 763 639) of 28/2 Kirkham Road West, Keysborough, Victoria 3173 (“the Company”)

and

THE PARTY WHOSE DETAILS ARE SET OUT AT ITEM 2 OF SCHEDULE A TO THIS AGREEMENT (“the Owner”)

RECITALS:

- A. The Owner is the registered proprietor of property, address and title details of which are set out at Item 3 of Schedule A to this Agreement (“the Property”).
- B. The Owner has agreed to list the Property for sale with a licensed real estate agent, details of whom are set out at Item 4 of Schedule A to this Agreement (“the Agent”).
- C. The Company provides advisory and facilitation services (including renovation works) to assist property/home owners in the sale of their residential property (“the Services”).
- D. The Company has agreed to provide the Services to the Owner upon the terms set out in this Agreement.
- E. The Owner has agreed to pay the Company for the Services from the proceeds of sale unless otherwise stated in this Agreement.

OPERATIVE PROVISIONS:

1. Agreement

The Company agrees at the request of the Owner to provide the Services to assist the Owner in the sale of the Property.

2. Commencement

- (a) The engagement of the Company commences on the Date of this Agreement and continues until terminated in accordance with this Agreement.
- (b) Time is of the essence of this Agreement.

3. Services

The Services shall comprise:

- (a) inspection of the Premises;
- (b) quotation for the Works in the form of Attachment Q (Quote) to this Agreement (“the Quotation”);
- (c) facilitation of the completion of the agreed Works in a timely manner by the Company or by third party contractors;
- (d) supervision and management of carrying out of the Works on behalf of the Owner;
- (e) payment of contractors for performance of the Works as required; and
- (f) all other activities necessary in order to provide the Services.

4. Price

- 4.1 The price for the Services shall be as set out in the Quotation as varied by agreement in writing between the parties (“the Price”).
- 4.2 Payment of the Price is due to the Company on the earlier of the following occurring:
 - (a) the deposit being released following sale of the Property together with any interest if applicable;

- (b) the settlement of the sale of Property; or
 - (c) the expiration of five (5) months from the date of this Agreement. Interest commences to accrue on the Price from the due date for the payment of the Price under this Agreement on any unpaid amounts at the rate prescribed pursuant to the Penalty Interest Rates Act 1983 plus 10% calculated monthly from the due date until payment in full of the Price together with accrued interest is received by the Company. Accumulated interest rates are invoiced at the end of each month and due 7 days from date of invoice.
- 4.3 Upon payment to the Company, the Company shall pay all independent contractors and shall indemnify the Owner and keep the Owner indemnified against any liability for payment to such contractors.
- 4.4 The parties agree that if any of the following events occur, the Price shall become payable immediately:
- (a) the mortgagee comes into possession of or provides notice of taking possession or recovery action against the Owner in relation to the Property;
 - (b) the Owner becoming aware of bankruptcy proceedings being commenced against the Owner or the Owner being made bankrupt whichever comes earlier; or
 - (c) upon the Owner breaching a material term of this Deed.

5. Domestic Building Contract

Where the Services include building works which are subject to and require a Domestic Building Contract, the Owner agrees to enter into such contract with the Company in the form of Attachment C (Contract) ("the Contract") to carry out any such building works. Where the Owner and the Company enter into the Contract, the Contract price for the building works shall be the Price and it is acknowledged that the Owner and the Company shall apportion the Price between them in such manner as they shall agree. The Price shall be payable to the Company by the Owner in the same manner as required under this Agreement.

6. Owner's Warranties and Representations

The Owner represents and warrants that:

- (a) the Property has been listed for sale, or is to be listed for sale, with the Agent as referred to at Recital B of this Agreement.
- (b) the Owner is the registered proprietor of the Property and has full authority to enter into this Agreement.
- (c) the Property has sufficient equity available to pay the Price for the Services.
- (d) until the sale of the Property, the Owner shall continue to pay all regular instalments in respect of the mortgage, council rates, water rates and any other outgoings in respect of the Property as they fall due.

7. Owner's Covenants

7.1 The Owner covenants as follows:

- (a) to immediately upon signing this Agreement provide the Company with the following:
 - (i) a current rates notice for the Property;
 - (ii) a current mortgage statement for the loan affecting the Property;
and
 - (iii) proof of identity documents with a minimum requirement being a valid driver's licence or valid passport.
- (b) to take all necessary steps and execute all necessary documents to cause the Property to be sold by private treaty at the earliest possible date upon completion of the Services by the Company.
- (c) to contemporaneously with the sale do all things and sign all documents to ensure that the Price is received by the Company from the deposit on sale or the proceeds of sale at settlement of the sale of the Property, as the case may be.
- (d) to accept any reasonable offer to sell the Property.

- (e) to accept any reasonable offer to sell the Property which must sufficiently discharge all mortgages and caveats enabling the Owner to deliver good title to a purchaser at settlement.
- (f) not to assign, sell or mortgage the Property without the express written consent of the Company for the duration of this Agreement.
- (g) to inform the Company of all offers made to purchase the Property within 24 hours of the offer being known to the Owner.

7.2 During the performance of the Services by the Company, the Owner will:

- (a) co-operate with the Company as the Company reasonably requires;
- (b) provide the information and documentation that the Company reasonably requires;
- (c) permit the Company to use other persons (such as subcontractors) to provide some or all of the Services; and
- (d) do anything else reasonably required by the Company in order to enable the Company to perform the Services in accordance with the Quotation.

7.3 In the event the Property fails to be sold by private treaty within a period of 2 months after completion of the Services, then the Owner shall:

- (a) as soon as possible take all necessary steps and execute all necessary documents to cause the Property to be sold by auction at the earliest possible date at the reserve price set in schedule A item 5, both acting reasonably; and
- (b) upon sale by auction, do all things and sign all documents to ensure that the Price is received by the Company from the early release of the deposit or from the proceeds of sale at settlement of the sale of the Property.

8. Limitation of liability and Indemnity

- (a) To the extent permitted by law, the Company excludes all statutory or implied conditions and warranties and any other liability the Company may have to the Owner (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.
- (b) To the extent permitted by law, the Company limits its liability which cannot be legally excluded under all statutory or implied conditions and warranties and any other liability the Company may have to the Owner (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action, to whichever of the following the Company determines at its discretion:
 - (i) supplying equivalent Services again; or
 - (ii) paying of the cost of acquiring equivalent Services again.
- (c) The Owner indemnifies the Company against all reasonable costs (including legal costs), expenses, damages, accounts or other losses or liability, including those arising from any actions, suits, proceedings, claims or demands, made against or suffered by the Company, arising out of the Company performing the Services in accordance with this Agreement or arising out of the Owner breaching any of the Owner's obligations (which includes any negligent act or omission by the Owner or its agents) under this Agreement.

9. Authority to Agent

The Owner irrevocably authorises and directs the Agent, pursuant to this Deed, to apply the balance of deposit money (after deduction of sales commission and selling expenses) to payment in full or part of the Price. Such payment is to be made upon the earlier of release of deposit money or settlement of the sale of the Property.

10. Security

To further secure payment of the Price, the Owner:

- (a) grants a charge over its estate and interest in the Property (and any other land in which the Owner has estate and interest or acquires such estate or interest in the future) to the Company and acknowledges that pursuant to this charge, the Company shall be entitled to register a caveat upon the title to the Property or to any other land in which the Owner has estate and interest.
- (b) irrevocably consents to a caveat being lodged in respect to a charge granted under the previous clause and agrees to pay the Owner's costs in relation to lodging a caveat.
- (c) agrees that the Company may make a registration on the Personal Property Securities Register over the assets of the Owner. For this purpose, the Owner agrees to provide to the Company a copy of a valid Victorian drivers licence.
- (d) irrevocably directs any lawyer or conveyancer acting on behalf of the Owner at settlement of the sale of the Property to pay the Price or the balance of the Price to the Company where release of deposit money has not been effected or where such money was insufficient to pay all of the Price.

11. Retention of title

- (a) The parties agree that all title, right and ownership in any works carried out by the Company and any materials, fixtures, fittings and other goods supplied by the Company as per the Services under this Agreement remain the exclusive property of the Company until payment of the Price has been received in full by the Company.
- (b) The Owner acknowledges that the Company holds a security interest capable of registration pursuant to the Personal Property Securities vAct in works carried out by the Company and any materials, fixtures, fittings and other goods supplied by the Company as per the Services under this Agreement and in all present and after acquired personal property of the Owner to secure payment of the amount the Owner owes to the Company from time to time. The Owner further acknowledges that the security interest will continue until the Company gives a final release in respect of it.

- (c) In default of payment of the Price, the Owner irrevocably authorises the Company, its servants and agents or any person authorised by the Company to enter the Property to remove the works carried out by the Company and any materials, fixtures, fittings and other goods supplied by the Company as per the Services under this Agreement.

12. Owner company

In the event that the Owner is an incorporated entity, the directors of the Owner will provide a personal guarantee of the obligations of the Owner pursuant to this Agreement in the form set out at Attachment G ("Guarantee").

13. Governing law

This Agreement shall be governed by and construed in accordance with the law of the State of Victoria and the parties submit to the jurisdiction of the Victorian courts.

14. Notices

14.1 All notices or other communications under this Agreement shall be in writing and may be served personally, by pre-paid mail or by electronic mail transmission to the address of each party as disclosed in this Agreement or as advised by one party to the other party from time to time.

14.2 Service shall be deemed to have taken place:

- (a) by personal delivery on the date of such delivery;
- (b) by post upon the second business day after posting; and
- (c) by electronic transmission when it enters the recipient's information system provided no server returns a message to any party that such electronic mail transmission cannot be delivered.

15. Entire agreement

This Agreement contains the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement, and supersedes any prior understanding, arrangement, representation or agreements between the parties as to the subject matter contained in this Agreement.

16. Amendment

An amendment or variation to this Agreement may only be made in writing, agreed and signed by all the parties.

17. Waiver

Any waiver by any party to a breach of this Agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

18. Validity

If any part of this Agreement is to any extent invalid, illegal or unenforceable in a court of law, the remaining terms of this Agreement will not be affected and will remain in full force.

19. Severance

If any provision of this Agreement is found to be unenforceable, illegal or void, it is severed from this Agreement and the rest of the Agreement remains in force.

20. Independent Legal Advice

Each party acknowledges that they have been provided the opportunity to seek independent legal advice in relation to this Agreement and they are fully aware of the legal effects and consequences of signing this Agreement.

21. Costs

- (a) Each party will bear their own legal costs incurred in relation to the preparation, negotiation and settling of this Agreement.
- (b) The Owner agrees to be solely responsible for the conveyancing costs incurred in the sale of the Property conducted in accordance with this Agreement.

22. Dispute resolution

- (a) If a dispute arises between the parties, the complainant must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied with this clause.

- (b) The complainant must inform the respondent in writing of the following:
 - (i) the nature of the dispute;
 - (ii) the outcome the complainant desires, and
 - (iii) the action the complainant believes will settle the dispute.
- (c) On receipt of the complaint by the respondent, both parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.
- (d) If the dispute has not been resolved after 21 days from commencement of negotiation, either party may commence court proceedings.
- (e) This clause survives termination of this Agreement.

Sample

EXECUTION:

The Company:

EXECUTED by KUDO HOMES PTY LTD (ACN 621 763 639)	
in accordance with section 127 of the Corporations Act 2001 (Cth)	
Director/Secretary	
Print name	
Address	

The Owner (if individual/s):

SIGNED SEALED AND DELIVERED by the)
 said in the presence of:) _____

Witness (signature): _____

SIGNED SEALED AND DELIVERED by the)
 said in the presence of:) _____

Witness (signature): _____

The Owner (if a company):

EXECUTED by _____ (ACN _____)	
in accordance with section 127 of the Corporations Act 2001 (Cth)	
Director	
Print name	
Print usual address	

Director/secretary	
Print name	
Print usual address	

SCHEDULE A

Item 1: Date of Agreement

Item 2: The Owner

Name: _____

Address: _____

Phone number: _____

Email address: _____

Item 3: The Property

Address: _____

Certificate of title: Volume _____ Folio _____

Item 4: The Agent

Name: _____

Company: _____

Address: _____

Phone number: _____

Email address: _____

Item 5: Agreed Reserve Auction Price

Amount \$: _____