

Our Ref: SLW:210225

Your Ref:

Birch & Co
SOLICITORS

Birch & Co Solicitors Pty Ltd
Technology Office Park
Building 17A
107 Miles Platting Rd
EIGHT MILE PLAINS
QLD 4113

PO Box 6089
Upper Mount Gravatt Q 4122

Phone: (07) 3251 6777
Fax: (07) 3251 6778
Email: info@birchandco.com.au
Web: www.birchandco.com.au
ABN: 47 620 357 986

10 December 2021

Mr John Victor Barnett and Ms Kathryn Beth Eggleton as trustee under Instrument
718923403
62 Harvest Road
GREENBANK QLD 4124

Copy By Email: johnv.barnett@yahoo.com.au

Dear Mr Barnett and Ms Eggleton,

**DYLAN JAMES MENZ AS TRUSTEE PURCHASE FROM JOHN VICTOR
BARNETT AND KATHRYN BETH EGGLETON AS TRUSTEE
PROPERTY: 15 INDUSTRIAL AVENUE, LOGAN VILLAGE, QUEENSLAND
4207**

We refer to our email of even date in relation to the above matter.

For your records, we now **enclose** copies of the deposit receipts issued by your bank confirming that:

1. the sum of \$380,137.29, being balance settlement moneys; and
2. the sum of \$20,000.00, being deposit moneys,

have been deposited into your nominated account. Please note that it may take a few days for your bank to process the deposits and put the funds into your nominated account.

We thank you for your assistance regarding the matter.

Yours faithfully

BIRCH & CO

Birch & Co

Customer receipt.



Office Use: 034002:F075012:1097:01

Date: 10/12/2021

Account No.	Transaction type	Amount
Sed: 824646782		
#####4128	Deposit	\$380,137.29
Agent Ref: 3251677		

Transactions followed by an asterisk (*) include GST component.

Westpac Banking Corporation ABN 33 007 457 141 AFSL 233714.

WBCROT001 0919

Customer receipt.



Office Use: 034093:F045885:1057:01

Date: 10/12/2021

Account No.	Transaction type	Amount
Seq: 824667313 #####4128	Deposit	\$20,000.00

Transactions followed by an asterisk (*) include GST component.

Our Ref: SLW:210225

Your Ref:

Birch & Co
SOLICITORS

ORIGINAL BY EXPRESS POST ONLY

E-MAILED
13/10/2021

Birch & Co Solicitors Pty Ltd
Technology Office Park
Building 17A
107 Miles Platting Rd
EIGHT MILE PLAINS
QLD 4113

13 October 2021

Mr John Victor Barnett and Ms Kathryn Beth Eggleton as trustee under Instrument
718923403
C/- 2823 Old Cleveland Road
Chandler Qld 4155

PO Box 6089
Upper Mount Gravatt Q 4122

Phone: (07) 3251 6777
Fax: (07) 3251 6778
Email: info@birchandco.com.au
Web: www.birchandco.com.au
ABN: 47 620 357 986

Copy By Email: johnv.barnett@yahoo.com.au

Dear Mr Barnett and Ms Eggleton,

**DYLAN JAMES MENZ AS TRUSTEE PURCHASE FROM JOHN VICTOR
BARNETT AND KATHRYN BETH EGGLETON AS TRUSTEE
PROPERTY: 15 INDUSTRIAL AVENUE, LOGAN VILLAGE**

We refer to our recent telephone discussion with Mr Barnett in relation to the above matter.

We note your confirmation during our telephone discussion that the sellers:

1. are satisfied with our office holding the deposit moneys in our trust account rather than the Ray White Commercial Springwood; and
2. agree to our client paying the deposit moneys by the date which is 5 business days after the date of formation of the Contract of Sale.

As regards the foregoing, we confirm that we have now received the deposit moneys in our trust account. A copy of our trust account receipt is **enclosed** for your records.

We also **enclose** a copy of the fully executed and dated Contract of Sale. You will see from the enclosed that we have amended same in accordance with your previous confirmation above.

CONTRACTUAL DATES

Pursuant to the provisions of the Contract of Sale, we note the relevant contractual dates as follows:

Contract Date:	11 October 2021;
Deposit Due Date:	18 October 2021;
Due Diligence Date:	11 November 2021;



Finance Date: 15 November 2021;

Settlement Date: 30 November 2021.

We shall advise you in due course in relation to the above matters.

Special Condition 3 – Contemporaneous Contracts

We are instructed to advise that Special Condition 3.1 of the Contract has been satisfied.

We note that this Contract remains subject to the Other Contract settling at a contemporaneous time and place as settlement of this Contract. We shall advise you in due course regarding same.

GENERAL MATTERS

Pursuant to the contract, please provide copies of documents relating to unregistered interests in the property, and copies of all security interests or sufficient details to enable a search of the Personal Property Security Register which may relate to this transaction, 14 days from today and prior to settlement. If we do not receive a response from you concerning the foregoing request, we will assume that there are no such documents or dealings.

If there are any registrations in the Personal Property Security Register which affect any property being sold under the Contract, we shall require that you produce at settlement an appropriate Deed of Release and Undertaking to Amend from any relevant security holder in respect of any securities or company charges that may relate to this transaction.

We require that all notices under the contract be exchanged in accordance with the provisions of the contract. Accordingly, unless the contract specifically authorises such notice, we **do not** agree to receive notices under the contract by email.

We reserve our client's rights under the Contract of Sale to effect settlement at any time permitted by the contract on the date for completion and advise that any arrangement whether formally agreed or not as to a specific time and/or place for such settlement shall be deemed to be without prejudice to our client's rights to settle or to offer to settle at any other time or place on the date for settlement.

So as there may be no doubt, should we or our client enter into or entertain any negotiations with you regarding any variation of the terms of the Contract of Sale, we put you on notice that any such negotiations are subject to and without prejudice to our client's subsisting rights under the contract or at law and no such variation shall be taken to be a waiver by our client of such rights until agreed in writing.

NEXT STEPS

As you may be aware, until our client gives notice regarding the relevant contractual conditions the Contract remains conditional. As noted above, we shall advise regarding the outcome of our client's finance application and due diligence enquiries in due course.

Should you have any questions or queries in relation to the matter, we recommend that you seek independent legal advice. Should you decide to engage a conveyancer or solicitor to act on your behalf, please have them contact us so that we may update our records accordingly.

In the meantime, would you please **urgently** provide us with your respective dates of birth together with the ABN for your trust so that we may effect PPSR searches as permitted under the Contract.

Yours faithfully
BIRCH & CO
Birch \$Co

Trust Account Receipt

Dylan James Menz atf Menz Property Trust
29 Strathburn Crescent
ORMEAU QLD 4209

Date: 12/10/2021
Date Entered: 13/10/2021
Receipt No: 717

Received From: Dylan James Menz atf Menz Property Trust
29 Strathburn Crescent
ORMEAU QLD 4209

Account Name: Birch & Co Solicitors Pty Ltd Law Practice
Trust Account
Bank: ANZ
BSB: 014606
Account Number: 305717731

Payment Method	Total Amount	Amount in words
Direct Deposit	\$20,000.00	Twenty Thousand Dollars

Matter No	Client	Description	Reason	Amount
210225A	Birch & Co Solicitors Pty Ltd as stkhdr for Dylan James Menz atf Menz Property Trust; John Victor Barnett & Kathryn Eggleton as trustee	Birch & Co Solicitors P/L as stakeholder for Dylan James Menz atf Menz Property Trust; John Victor Barnett & Kathryn Eggleton as trustee - Property: 15 Industrial Avenue, Logan Village	Deposit moneys - 15 Industrial Avenue, Logan Village	\$20,000.00

Receipt made out by: Jenny Menz

On behalf of Birch & Co

Contract for Commercial Land and Buildings

Eighth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Commercial Land and Buildings in Queensland.

The Seller and Buyer agree to sell and buy the Property under this contract.

REFERENCE SCHEDULE

A CONTRACT DATE

NOTE 1 11/10/2021

B AGENT:

NAME: Without the intervention of an Agent

ADDRESS: STREET: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

PHONE: _____ FAX: _____ EMAIL: _____

ABN/ACN: _____ LICENCE NO: _____

C SELLER:

NAME: JOHN VICTOR BARNETT AND KATHRYN BETH EGGLETON AS TRUSTEE UNDER INSTRUMENT 718923403

ADDRESS: STREET: 15 Industrial Avenue

SUBURB: Logan Village STATE: Qld POSTCODE: 4207

PHONE: _____ FAX: _____ MOBILE: 0412 072 973 EMAIL: johnv.barnett@yahoo.com.au

ABN/ACN: 41 375 816 406

D SELLER'S SOLICITOR:

NAME: SELF-ACTING

ADDRESS: STREET: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

PHONE: _____ FAX: _____ MOBILE: _____ EMAIL: _____

ABN/ACN: _____

INITIALS (Note: Initials not required if signed with Electronic Signature)

[Handwritten initials: JVB, KBE, and DM]

E BUYER:

NAME:	DYLAN JAMES MENZ AS TRUSTEE FOR MENZ PROPERTY TRUST			
ADDRESS:	STREET:	C/- Birch & Co, Solicitors		
		Building 17A, 107 Miles Platting Road		
	SUBURB:	Eight Mile Plains	STATE:	Qld
			POSTCODE:	4113
PHONE:	FAX:	MOBILE:	EMAIL:	
ABN/ACN:	81 205 066 231			

F BUYER'S SOLICITOR:

NAME:	Birch & Co, Solicitors			
ADDRESS:	STREET:	Building 17A, 107 Miles Platting Road		
	SUBURB:	Eight Mile Plains	STATE:	Qld
			POSTCODE:	4113
PHONE:	FAX:	MOBILE:	EMAIL:	
(07) 3251 6777	(07) 3251 6778		info@birchandco.com.au	

G DEPOSIT HOLDER:

NAME:		PHONE:	
-------	--	--------	--

H LAND:

Address:	15 Industrial Avenue				
Suburb:	Logan Village	STATE:	Qld	POSTCODE:	4207
Present use: (if any)	VACANT URBAN LAND				
Description:	LOT 15 ON SP304100				
Title reference:	51152537	Area:	1514m ²	■ more or less	

NOTE 2
(See
warning)

NOTE 3

Type of holding:	Freehold	Lease No:	Not Applicable
Local Government:	Logan City Council		

I IMPROVEMENTS INCLUDED IN SALE:

NOTE 4

Nature of Buildings:	
----------------------	--

Unless excluded below, the Purchase Price includes all partitions, stoves, hot water systems, wall-to-wall floor coverings, drapes and tracks, blinds, light fittings, clothes lines, hoists, fixed television or satellite antennae or dishes, in-ground shrubs and all fixtures as inspected by the Buyer.

Exclusions:

--

J OTHER CHATTELS INCLUDED IN SALE: ■ Attach inventory if Insufficient space

--

INITIALS (Note: Initials not required if signed with Electronic Signature)



K THE LAND IS SOLD AS:

- Choose which applies: Freehold Subject to the reservations, covenants and conditions in the deed of grant
- Leasehold Subject to the condition of the Lease, easement etc.

L ENCUMBRANCES:

Is the Property sold subject to any Encumbrances? Yes No

EASEMENT IN GROUPO No 11746/0344 25/09/2016 at 11/24 Bocking
LOGAN CITY COUNCIL OVER EASEMENT R ON SP272901

WARNING TO SELLER You are required to disclose all **Life Encumbrances** which will remain after settlement (for example easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. This is NOT sufficient to state "refer to title". Search will reveal "or similar".

M LEASES AND SERVICE CONTRACTS:

See Lease Schedule and Service Contract Schedule

N PURCHASE PRICE:

\$ 400,000.00

O DEPOSIT:

DM
~~\$20,000.00~~ *92% of*
 Deposit payable on ~~1st Application~~ *DM* ~~the date which is 5 Business Days after the date of formation of this Contract~~
~~Not Applicable~~ *DM* ~~the date of deposit of any payable or~~ *92% of* ~~Not Applicable~~
 Deposit Holder's Trust Account: ~~Not Applicable~~ *ONE COMMERCIAL PTY LTD AT ONE COMMERCIAL TRUST*
Birch & Co Solicitors Pty Ltd Law Practice Trust Account
 Bank: ~~Not Applicable~~ *SEACORP ANZ*
 HSB: ~~Not Applicable~~ *184 499* Account No. ~~Not Applicable~~ *609861556* *DM*
014-606 3057 17731

P DEFAULT INTEREST RATE:

If a figure is inserted the Contract Rate applying at the Contract Date published by the Queensland Rate Society Inc will apply

Q SETTLEMENT DATE:

The date which is fifty (50) days after the date of formation of this Contract
or the next Business Day if that is a Business Day in the city or town of Brisbane

R CITY OR TOWN FOR SETTLEMENT:

Brisbane

Contract No 15-13-2017

NOTE: SUBJECT TO FINANCE: If this Contract is subject to finance then items S, T and U must be completed in each case. If item V must be created and installed.

NOT SUBJECT TO FINANCE: If this Contract is not to be subject to finance then items S, T and U must be deleted from the Contract and item V shall apply.

S LENDER OR CLASS OF LENDER:

Financial Institution of the Buyer's Choice

INITIALS (Note: Initials not required if signed with Electronic Signature)

DM *DM*

T THE APPROVAL DATE:

The date which is thirty-three (33) days after the date of formation of this Contract

OR the next Business Day if that is not a Business Day in the city or town in item R

U AMOUNT OF LOAN:

\$ Amount sufficient for Buyer to complete this Contract

V

THIS CONTRACT IS NOT SUBJECT TO FINANCE AND CLAUSE 31 OF THE STANDARD COMMERCIAL CONDITIONS DOES NOT APPLY.

W NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

The Seller gives notice to the Buyer in accordance with Section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Land: (select whichever is applicable)

*is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land

*is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

■ **WARNING:** Failure to comply with s83 Neighbourhood Disputes (Dividing Fences and Trees Act 2011) by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

X BUILDING AND/OR PEST INSPECTION DATE

Inspection Date: Not Applicable

■ If 'Inspection Date' is not completed, the contract is not subject to an inspection report and clause 35 does not apply.

INITIALS (Note: Initials not required if signed with Electronic Signature)

[Handwritten signatures and initials]

GOODS AND SERVICES TAX – WARNING

Marking the GST items in the GST Table may have significant consequences for the Seller and Buyer. The Seller and Buyer should seek professional advice about completion of the GST items and not rely on the Agent to complete the GST items.

Notes to completion:

- A. Only 1 box in the selected item must be marked.
- B. If the Yes box in item GST1 is marked:
 - items GST2 and GST3 must not be marked;
 - despite any markings of Items GST2 and GST3, Clauses 34.4, 34.5 and 34.6 do not apply.
- C. If the Yes box in item GST2 is marked:
 - Items GST1 and GST3 must not be marked;
 - despite any marking of Items GST1 and GST3, Clauses 34.4, 34.5 and 34.7 do not apply.

GST1 Going Concern:

Is this a sale of a Going Concern? Yes
 If Yes, clause 34.7 (If the Supply is a Going Concern) applies.
 Otherwise clause 34.7 (If the Supply is a Going Concern) does not apply.
 If the Yes box is marked, do not complete Items GST2 and GST3.

■ **WARNING:** There are strict requirements for the sale of a Going Concern under the GST Act. If in doubt about complying with those provisions, seek professional advice before marking this item.

GST2 Margin Scheme:

Is the Margin Scheme to apply to the sale of the Property? Yes
 If Yes, clause 34.6 (Margin Scheme) applies. ■ If the Yes box is marked, do not complete Items GST1 and GST3.
 Otherwise clause 34.6 (Margin Scheme) does not apply.
 The Seller must not apply the Margin Scheme to the Supply of the Property if clause 34.6 does not apply.

GST3 Inclusive or Exclusive Purchase Price:

Does the Purchase Price include GST?	Mark 1 box only	
<input checked="" type="checkbox"/> Yes		If Yes, clause 34.4 (Purchase Price includes GST) applies.
<input type="checkbox"/> No		If No, clause 34.5 (Purchase Price Does Not Include GST) applies

■ Do not complete Item GST3 if Item GST1 (Going Concern) or Item GST2 (Margin Scheme) are marked Yes.

If neither box is marked or if both boxes are marked, clause 34.4 (Purchase Price Includes GST) applies.

GST WITHHOLDING OBLIGATIONS

Buyer Warranty

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?
 (select whichever is applicable)

■ **WARNING:** the Buyer warrants in clause 4.5 that this information is true and correct.

Yes

No

[Note: If the Buyer selects [No] the Seller may be required to give a notice under section 14-255 of the Withholding Law prior to settlement]

INITIALS (Note: Initials not required if signed with Electronic Signature)

[Handwritten Signature] DM

LEASE SCHEDULE*

See Clause 32 of Standard Commercial Terms

LEASE 1:

Name of Tenant: Not Applicable

Use: _____

Location/Tenancy No: _____

Area of Tenancy (m² approx.): _____

Current Rent per Annum: \$ _____ inclusive of outgoings exclusive of outgoings

Current Commencement Date: _____

Current Lease Term: _____

Remaining Options:

Option 1	Term	_____	years
Option 2	Term	_____	years
Option 3	Term	_____	years

Tenant Car Park: No.: _____ Rate \$ _____ per annum per month

LEASE 2:

Name of Tenant: _____

Use: _____

Location/Tenancy No: _____

Area of Tenancy (m² approx.): _____

Current Rent per Annum: \$ _____ inclusive of outgoings exclusive of outgoings

Current Commencement Date: _____

Current Lease Term: _____

Remaining Options:

Option 1	Term	_____	years
Option 2	Term	_____	years
Option 3	Term	_____	years

Tenant Car Park: No.: _____ Rate \$ _____ per annum per month

* Attach further Schedule if insufficient space.

SERVICE CONTRACT SCHEDULE*

See Clause 32 of Standard Commercial Terms

CONTRACT 1:

Contractor: Not Applicable

Service Performed: _____

Cost: \$ _____ per annum per quarter per month

CONTRACT 2:

Contractor: _____

Service Performed: _____

Cost: \$ _____ per annum per quarter per month

CONTRACT 3:

Contractor: _____

Service Performed: _____

Cost: \$ _____ per annum per quarter per month

INITIALS (Note: Initials not required if signed with Electronic Signature)

[Handwritten signatures and initials]
 Initials: *[Signature]* *[Signature]* *DM*

SPECIAL CONDITIONS

1. Execution by Facsimile

This Contract may be entered into by one party executing the Contract (or photocopy, email or facsimile copy) that has been executed by the other party and transmitting a copy of same to the other party or the other party's agent or solicitor by email or facsimile.

2. Due Diligence

- 2.1 This Contract is subject to and conditional upon the Buyer being satisfied with the results of all of its Due Diligence Enquiries on or before 5:00pm on the Due Diligence Date.
- 2.2 In order that the Buyer may conduct its Due Diligence Enquiries, the Seller must, upon the Buyer giving to the Seller reasonable notice, permit the Buyer and its representatives and agents access to the Property at all reasonable times.
- 2.3 The Buyer must give notice to the Seller that:
- (a) it is not satisfied with the results of its Due Diligence Enquiries by the Due Diligence Date and the Buyer terminates this Contract; or
 - (b) the Buyer is satisfied for the purposes of Special Condition 2.1 or it waives the benefit of the provisions of Special Condition 2.1.
- 2.4 The Seller may terminate this Contract by notice to the Buyer if notice is not given under Special Condition 2.3 by 5:00pm on the Due Diligence Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 2.5 The Seller's right under Special Condition 2.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to Special Condition 2.3.
- 2.6 For the purposes of this Special Condition 2, the following words have the corresponding meanings:
- (a) **Due Diligence Date** means the date which is thirty (30) days after the date of formation of this Contract;
 - (b) **Due Diligence Enquiries** includes enquiries, investigations and inspections relating to the Property including, but not limited to physical inspections, traffic issues, town planning and zoning issues, council requirements, building approvals and inspections and statutory searches (including title searches, contaminated lands and environmental management register searches, land tax searches and Local and State government searches) and any other matters in order to satisfy itself for the purposes of Special Condition 2.

3. Contemporaneous Contracts

- 3.1 This Contract is subject to and conditional upon the Other Contract being executed.
- 3.2 This Contract is subject to and conditional upon the Other Contract settling at a contemporaneous time and place as settlement of this Contract.
- 3.3 The Buyer may terminate this Contract by notice to the Seller if Special Condition 3.1 or Special Condition 3.2 is not satisfied.
- 3.4 For the purposes of this Special Condition 3, the following words have the corresponding meanings:
- (a) **Other Contract** means a contract for the sale of the land situated at 17 Industrial Avenue, Logan Village in the State of Queensland which land is more particularly described as Lot 16 on SP304100 contained in Title Reference 51152538 entered into or to be entered into by Ben Barnett Holdings Pty Ltd A.C.N. 626 378 434 as trustee under Instrument 718922229 as seller and the Buyer as buyer.

The approval by The Real Estate Institute of Queensland Limited and the Queensland Law Society Inc does not extend to any alterations to the printed text of the Standard Commercial Terms or to any Special Conditions of this Contract. The Standard Commercial Terms may need to be added to or varied by inserting specifically prepared Special Conditions in this Contract. If the printed text of the Standard Commercial Terms is altered, or Special Conditions are included, it is recommended that the Seller and the Buyer consult their respective legal advisers prior to signing this Contract.

INITIALS (Note: Initials not required if signed with Electronic Signature)

Handwritten initials and signature, including the letters 'DM'.

SIGNATURES:

BUYER'S SIGNATURE:

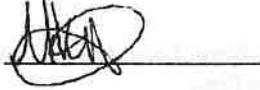


By signing this contract I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

NAME OF PERSON SIGNING:
(INSERT IN BLOCK LETTERS)

DYLAN MENZ

WITNESS:



[Note: No witness is required if the Buyer signs using an Electronic Signature]

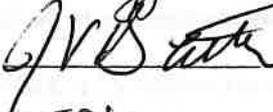
WITNESS NAME:

Marina King

K. Eggleton

KATHRYN BETH EGGLETON

SELLER'S SIGNATURE:

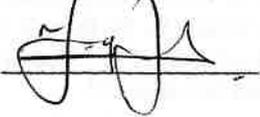


By signing this contract I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

NAME OF PERSON SIGNING:
(INSERT IN BLOCK LETTERS)

JOHN VICTOR BARNETT.

WITNESS:



[Note: No witness is required if the Seller signs using an Electronic Signature]

WITNESS NAME:

THE VAN QUACH

DEPOSIT HOLDER'S ACKNOWLEDGEMENT:

NOTE 8 The Deposit Holder acknowledges having received \$ _____ as the Deposit or on account of the Deposit and agrees to hold that amount and any balance of the Deposit when received as Deposit Holder for the parties as provided in this Contract.

Deposit Holder's Signature: _____

Licence No.: _____

INITIALS (Note: Initials not required if signed with Electronic Signature)



DM

Standard Commercial Terms | Commercial Land and Buildings

Eighth Edition © Copyright

1. DEFINITIONS

- 1.1 In this Contract, terms in **bold** in the Reference Schedule have the meanings shown opposite them and unless the context otherwise indicates:
- (a) **"Agent"** means the person named in Item B and includes auctioneer;
 - (b) **"ATO"** means the Australian Taxation Office;
 - (c) **"ATO Clearance Certificate"** means a certificate issued under section 14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
 - (d) **"Bond"** includes any security for payment of rent or other monies or performance of any obligation pursuant to any Lease;
 - (e) **"Business Day"** means a day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday in the city or town named in Item R; or
 - (iii) a day in the period 27 to 31 December (inclusive)
 - (f) **"Buyer"** means the party named in Item E;
 - (g) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
 - NOTE 6 (h) **"Contract Rate"** means the rate of interest at the Contract Date published by the Queensland Law Society Incorporated for the purposes of clause 11;
 - (i) **"Deposit"** means the sum stated in Item O;
 - (j) **"Deposit Holder"** means the person named in Item G or, where no person is named in Item G, the Agent;
 - (k) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
 - (l) **"Encumbrances"** includes but is not limited to:
 - (i) unregistered encumbrances;
 - (ii) statutory encumbrances; and
 - (iii) Security Interests.
 - (m) **"Enterprise"** means the enterprise (as the term is defined in the GST Act) carried on using the Property;
 - (n) **"Financial Institution"** means a bank, building society or credit union;
 - (o) **"GST"** means the goods and services tax under the GST Act;
 - (p) **"GST Act"** means A New Tax System (Goods and Services Tax) Act and includes other GST related legislation;
 - (q) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation;
 - (r) **"Guarantee"** means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
 - (s) **"ITAA"** means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997;
 - (t) **"Item"** means an item of particulars in the Reference Schedule;
 - (u) **"Keys"** means implements or instruments necessary for the purposes of fastening or unfastening:
 - (i) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Land (whether or not such gate, door, grille, shutter or lift forms part of the Property);
 - (ii) any other lock attached to or included in the property, and includes electronic devices and written records of all codes and combinations necessary for the purposes of fastening or unfastening any such lock;
 - (v) **"Land"** means the land described in Item H;
 - (w) **"Lease"** means all leases, subleases, agreements for lease, agreements for sublease and tenancy agreements whether oral or in writing, and as the context admits, licences and rights to occupy, and which are set out in the Lease Schedule;
 - (x) **"Local Government"** means the relevant local government (and includes the Brisbane City Council);
 - (y) **"PPSR"** means the Personal Property Securities Register established under *Personal Property Securities Act 2009 (Cth)*;
 - (z) **"Property"** means the property listed in Items H, I and J and includes any part of the Property;
 - (aa) **"Purchase Price"** means the sum stated in Item N;
 - (bb) **"Rent"** means base rent, turnover rent, percentage rent, contributions to outgoings and any money payable by a tenant to the Seller.
 - (cc) **"Security Interests"** means all security interests registered on the PPSR over the Property;
 - (dd) **"Seller"** means the party named in Item C;
 - (ee) **"Service Contract"** for the purposes of clause 32 of this Contract means any contract between the Seller and another party pertaining to services performed for the benefit of the Property, which are capable of assignment, and which are set out in the Service Contract Schedule and **"Service Contractor"** means any party performing those services;
 - (ff) **"Settlement Date"** means the date stated in Item Q or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;
 - (gg) **"Site Value"** means:
 - (i) in the case of non-rural land, site value under the *Land Valuation Act 2010*; or
 - (ii) in the case of rural land, the *unimproved* value of the Land under the *Land Valuation Act 2010*;
 - (hh) **"Solicitor"** means a solicitor currently entitled to practice in Australia whether acting as principal or agent;
 - (ii) **"Transport Infrastructure"** has the meaning in the *Transport Infrastructure Act 1994*; and
 - (jj) **"Withholding Law"** means Schedule 1 to the *Taxation Administration Act 1953 (Cth)*.
- 12 Unless the contrary is shown, the contract shall be deemed to have been formed on the date of this Contract and the date of this Contract shall be deemed to be the date stated in Item A.
- 13 Any reference in this Contract to a statute includes:
- (a) any statute amending, consolidating or replacing the statute; and
 - (b) Orders in Council, proclamations, regulations, rules, by-

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laws and ordinances made under the statute.

- 14 In this Contract, unless inconsistent with the context or subject matter, where the term "Item" is used in conjunction with a particular letter of the alphabet, it is a reference to the item set opposite the letter referred to.
- 15 Any defined terms used in any part of this Contract shall have the same meaning when used in any other part of this Contract.
- 16 The marginal notes in the Reference Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Terms.
- 17 This Contract shall be governed by the laws of Queensland.
- 18 Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

2. BUSINESS DAYS

- 21 If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

3. DEPOSIT

- 31 The Deposit shall be paid by the Buyer to the Deposit Holder at the times stated in Item O.

- 32 If the Buyer:

- (a) fails to pay the Deposit as provided in clause 3.1;
- (b) pays the Deposit by cheque which is post-dated; or
- (c) pays the Deposit by cheque which is not honoured on presentation;

then, the Buyer shall be in substantial breach of this Contract and the Seller may:

- (i) affirm this Contract and exercise the rights expressed in clause 13.2; or
- (ii) terminate this Contract and exercise the rights expressed in clause 13.3.

- 33 The rights and powers conferred by clause 3.2 are in addition to any other rights the Seller may have at law or in equity.
- 34 The Deposit shall be retained by the Deposit Holder until settlement or earlier termination of this Contract whereupon the Deposit Holder shall pay the Deposit to the person entitled to it.
- 35 If this Contract is terminated pursuant to the provisions of clauses 7.6, 9.3(a), 19, 20.1, 21.1, 31.2(a), 32.2, 32.3(b) or 35.4, the Deposit and other moneys paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be but without interest, costs or damages and the same shall be accepted by the Buyer in full and final satisfaction of all claims.

4. SETTLEMENT AND POSSESSION

- 41 The balance of the Purchase Price shall be paid on the Settlement Date as the Seller or the Seller's Solicitor directs in exchange for:

- (a) possession of the Property (such possession to be vacant except for any Lease);
- (b) a properly executed transfer for the Land in favour of the Buyer capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) and title to the Property (other than the Land) free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;
- (c) any declaration required, by the *Duties Act 2001* to be furnished to procure the stamping of the transfer;
- (d) such other instruments or declarations as are required by law to be signed by the Seller to procure the stamping and/or registration of the transfer;
- (e) except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer;
- (f) notices of assignment issued pursuant to clause 16.5;

NOTE 9

- (g) all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property and which are exclusive to the Property;
- (h) true copies of all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Building Act 1975* appropriate to the uses stated in Item H (if the improvements on the Land may not be lawfully occupied unless such certificate has issued);
- (j) all plans and drawings relating to the construction of the improvements on the Land in the possession or control of the Seller; and
- (k) all documents in the possession or control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare returns under the ITAA.

- 42 If both of the following apply:

- (a) the sale is not an excluded transaction under section 14-215 of the *Withholding Law*; and
- (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
 - (i) an ATO Clearance Certificate; or
 - (ii) a variation notice under section 14-235 of the *Withholding Law* which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 4.1, the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the *Withholding Law* and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

- 43 For clause 4.2 and section 14-215 of the *Withholding Law*, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

- (a) the Property includes items in addition to the Land and Improvements; and
- (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

in which case the market value of the Land and Improvements will be as stated in the valuation.

- 44 If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the *Withholding Law*:

- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the *Withholding Law*;
- (b) prior to settlement the Buyer must lodge with the ATO:
 - (i) a *GST Property Settlement Withholding Notification form* ("Form 1"); and

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(ii) a GST Property Settlement Date Confirmation form ("Form 2");

(c) on or before settlement, the Buyer must give the Seller copies of:

- (i) the Form 1;
- (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
- (iii) confirmation from the ATO that the Form 2 has been lodged; and
- (iv) a completed ATO payment slip for the Withholding Amount;

- (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
- (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with s 14-250 of the Withholding Law promptly after settlement.

45 The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

5. KEYS

61 Immediately on settlement, the Seller shall deliver all Keys, which are in the possession or under the control of the seller, in accordance with any notice given in writing by the Buyer to the Seller and failing such notice, the Seller shall deliver the Keys:

- (a) to the Buyer, if the Buyer is present personally at settlement;
- (b) to the Buyer's solicitor at settlement, if the Buyer is not present personally;
- (c) to the Seller's Agent at the address shown in Item B, if neither the Buyer nor any solicitor acting for the Buyer is present personally at settlement;
- (d) to and will leave the keys at the Property if none of the provisions of clauses 5.1(a), 5.1(b) or 5.1(c) are applicable.

62 At or prior to settlement, the Seller shall make a written record of all codes and combinations necessary for the purposes of fastening or unfastening any lock referred to in the definition of Keys.

6. INVESTMENT OF DEPOSIT

61 If either party directs by notice in writing to the Deposit Holder to invest the Deposit then (where the Deposit Holder is lawfully able) the Deposit Holder shall invest the Deposit with any Financial Institution permitted by law for the investment of trust monies until the Settlement Date.

62 If this Contract is completed, all interest accruing on the investment of the Deposit shall be shared equally between the Seller and the Buyer. If this Contract is not completed for any reason, the interest accruing on the Deposit shall be paid to the party entitled to the Deposit upon termination of this Contract.

63 The Deposit and any accrued interest shall be invested at the risk of the party to whom the Deposit and accrued interest is ultimately payable and the Deposit Holder shall not be liable for any loss suffered by the parties in consequence of an investment pursuant to clause 6.1.

64 To facilitate investment of the Deposit, each party shall notify its tax file number to the Deposit Holder within 4 Business Days following the date of this Contract.

65 The parties authorise the Deposit Holder to prepare and lodge any taxation return necessary in respect of the Deposit and interest and to pay any tax assessed out of the Deposit and interest and indemnify the Deposit Holder against any taxation assessed in respect of such interest.

66 The Seller and the Buyer shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of ITAA.

7. SELLER'S STATEMENT

7.1 The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Property.

7.2 The Seller states that, except as disclosed in this Contract, each of the following statements is accurate at the time the Seller executes this Contract:

- (a) the Seller has free and unqualified capacity and power to contract and to complete this Contract;
- (b) the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this Contract; and
- (c) if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the settlement of this Contract.

7.3 The Seller states that, except as disclosed in this Contract, each of the following statements will be accurate at the Settlement Date:

- (a) there is no current litigation by any person claiming an estate or interest in the Property;
- (b) there is no unsatisfied judgment, order or writ of execution which affects the Property;
- (c) no order has been made under Part 11 of the *Property Law Act 1974* which would operate as a charge on the Land;
- (d) there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
- (e) no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Property may be rendered liable to forfeiture to the Crown;
- (f) if the Land is Crown leasehold title, the Crown leasehold title is not rendered liable to forfeiture by reason of the non-observance or non-performance of the covenants or conditions of the lease;
- (g) if the Seller is a natural person, the Seller is not a bankrupt nor has the Seller signed any authority under section 188 of the *Bankruptcy Act 1966* (Cth);
- (h) if the Seller is a corporation within the meaning of the *Corporations Act 2001* (Cth):
 - (i) the Seller is not in liquidation;
 - (ii) no action has been taken by or against the Seller which could lead to the winding up of the Seller;
 - (iii) an administrator, controller or managing controller has not been appointed to the Seller or in respect of the whole or any part of the Property; and
 - (iv) a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
- (i) the Seller is the registered owner or the lessee of the Land (according to the title expressed or implied in this Contract).

7.4 If a statement contained in either clause 7.2 or clause 7.3 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

7.5 If this Contract is terminated pursuant to clause 7.4, the Deposit and other moneys paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be and the Seller shall be liable by way of damages as compensation for the loss suffered by the Buyer in such sum as at the time this Contract was made was reasonably foreseeable as the loss liable to result, and which does in fact result from a termination of this Contract due to a statement contained in either clause 7.2 or clause 7.3 not being accurate.

7.6 (1) The Seller warrants that, except as disclosed in this Contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the date of this

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Handwritten signatures and initials, including a large signature and the initials 'OM'.

Contract:

- (a) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of a notifiable activity being conducted on the Land; and
- (b) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.

(2) If the Seller breaches a warranty in clause 7.6(1), the Buyer may:

- (a) terminate this Contract by notice in writing to the Seller given 14 days after the date of this Contract; or
- (b) complete this Contract and claim compensation, but only if the Buyer claims it in writing before settlement of this Contract.

77 If requested by the Buyer, the Seller within 14 days of such request shall:

- (a) produce to the Buyer all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and
- (b) deliver to the Buyer photocopies of such documents or dealings (if the dealings are in writing) certified by the Seller or the Seller's solicitor as being true copies.

8. ERRORS AND MISDESCRIPTIONS

81 If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

82 If there is any material mistake or error in the description or particulars of the Property or as to title and the Buyer does not exercise any right which the Buyer has at law to terminate this Contract, the Buyer shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

9. SURVEY AND INSPECTION

91 The Buyer shall be entitled to conduct a survey of the Land to ascertain the boundaries and area of the Land and to establish the location of structures purporting to be on the Land or on adjoining land.

92 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

93 If there is any material error in the boundaries or area of the Land or any material encroachment, the Buyer shall be entitled to elect by notice in writing to the Seller given on or before the Settlement Date either:

- (a) to terminate this Contract; or
- (b) to complete this Contract with compensation, in which event the Buyer shall be entitled to such compensation as the case may require and shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

10. EXECUTION AND PRODUCTION OF DOCUMENTS

101 Subject to compliance by the Buyer with the Buyer's obligations under or by virtue of this Contract and subject to clause 10.2, the Seller shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Buyer obtains a good and valid title to the Property.

102 All transfer documents, any declaration required pursuant to clause

4.1(c), and all instruments or declarations required pursuant to clause 4.1(d) shall be prepared by and at the expense of the Buyer and delivered to the Seller within a reasonable time prior to the Settlement Date.

103 If so requested by the Buyer, the Seller shall deliver to the Buyer, prior to the Settlement Date, photocopies of the documents executed by the Seller.

104 After execution of the transfer, if so requested by the Buyer and upon payment of the usual production fee by the Buyer, the Seller shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4.1(c) and thereupon the Seller shall be deemed to have complied with the Seller's obligations under clause 4.1(c).

105 If an instrument of title is required to register a transfer of the Land and the instrument of title relating to the Land also relates to other land, the Seller shall not be obliged to deliver it to the Buyer but shall enter into such reasonable covenants with the Buyer as the Buyer may require for production of the instrument of title.

106 If the instrument of title is partially cancelled the Seller shall not be obliged to produce a separate instrument of title on settlement.

107 Where either clause 10.5 or clause 10.6 applies, the Buyer shall bear the cost of any new instrument of title relating to the Land.

11. INTEREST ON LATE PAYMENTS

111 The Buyer must pay interest at the annual rate in Item P:

- (a) on any amount payable under this contract which is not paid when due; and
- (b) on any judgement for money payable under this contract.

112 Interest continues to accrue:

- (a) under clause 11.1(a), from the date it is due until paid; and
- (b) under clause 11.1(b), from the date of judgement until paid.

113 Any amount payable under clause 11.1(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.

114 Nothing in this clause affects any other rights of the Seller under this contract or at law.

12. DIVIDING FENCES

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of construction of any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

13. BUYER'S DEFAULT

131 If the Buyer:

- (a) fails to pay the balance of the Purchase Price as provided in clause 4; or
- (b) fails to comply with any of the terms or conditions of this Contract;

then the Seller may:

- (i) affirm this Contract; or
- (ii) terminate this Contract.

132 If the Seller affirms this Contract pursuant to clause 3.2 or clause 13.1, the Seller may:

- (a) sue the Buyer for damages for breach or for specific performance and damages in addition to or instead of damages for breach; and
- (b) recover from the Buyer as a liquidated debt the Deposit or any part of it which the Buyer has failed to pay and shall pay the Deposit or any part of the Deposit which is recovered to the Deposit Holder.

133 If the Seller terminates this Contract pursuant to clause 3.2 or clause 13.1, the Seller may elect to:

- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Buyer for breach; or

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(b) declare the Deposit (or so much of it as shall have been paid) forfeited and/or resell the Property and if the resale is completed within 2 years from the date of termination any deficiency and any expense arising from such resale shall be recoverable by the Seller from the Buyer as liquidated damages;

and in either case the Seller may recover from the Buyer as a liquidated debt the Deposit or any part of it which has not been paid by the Buyer.

134 The rights and powers conferred upon the Seller by this clause 13 are in addition to any other right or power which the Seller may have at law or in equity.

14. PARTICULARS OF ADJUSTABLE ITEMS

141 Within a reasonable time after written request by the Buyer prior to the Settlement Date, the Seller shall deliver to the Buyer:

(a) a written statement of all rates, taxes, outgoings, rents and profits not capable of discovery by search or enquiry in any office of public record or pursuant to the provisions of any statute in respect of the Property; and

(b) (where the Land is subject to a Lease) a written statement disclosing to the extent the same is not disclosed in the Lease Schedule:

(i) the names and postal addresses of any tenant or other occupier of the Land;

(ii) the amounts, the due days for and the manner of payment of all periodic sums payable in respect of the Lease;

(iii) the date to which the same shall have been paid; and

(iv) the amounts of any Bond held from any such tenant or other occupier and the identity of the party holding such Bond.

142 If the Seller becomes aware of any information at any time between the date of delivering any such statement and settlement the effect of which is or may be to render such statement untrue in a material respect the Seller shall immediately disclose that information to the Buyer by notice in writing.

143 The Seller warrants that every such statement shall be true at the Settlement Date.

15. ADJUSTMENTS

151 The Seller shall pay or discharge all rates, taxes (including land tax) and other outgoings (except insurance premiums on insurances effected by the Buyer) with respect to the Property up to and including the date of possession.

152 The Buyer shall pay or discharge all rates, taxes (including land tax) and other outgoings with respect to the Property from the date of possession.

153 Except for water charges based on the quantity of water used all rates, taxes and outgoings shall be apportioned:

(a) in the case of those paid by the Seller, on the amount actually paid;

(b) in the case of those levied but unpaid, on the amount payable disregarding any discount for early payment;

(c) in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority disregarding any discount for early payment; and

(d) in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the date of possession, on the amount payable in that separate assessment disregarding any discount for early payment.

154 Any rates in the nature of water rates and which are not determined by reference to water usage shall be apportioned in accordance with clause 15.3. Any water charges based on the quantity of water used shall be adjusted in accordance with the following provisions:

(a) the Buyer, at the expense of the Buyer, shall read or procure the reading of any water meter installed on the Land no more than 5 days and no less than 3 days prior to the date of possession, and shall inform the Seller of the results of the water meter reading;

(b) the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") shall be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in clause 15.4(a) (no allowance being made for seasonal or other factors);

(c) the likely assessment of water charges for the deemed water usage shall be calculated by using the method and rates then being used by the Local Government or other water supplier ("the likely assessment");

(d) the likely assessment shall then be apportioned.

155 Land tax shall be apportioned

(a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or

(b) If there is no separate Site Value for the Land, on a notional Site Value equal to:

$$\frac{\text{Site Value of the parcel} \times \text{Area of the Land}}{\text{Area of the parcel}}$$

156 If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the balance of the Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 15.3.

16. RENTS AND PROFITS GUARANTEES AND BONDS

161 The rents and profits with respect to the Property shall benefit the Seller up to and including the date of possession and thereafter shall benefit the Buyer and shall be dealt with as follows:

(a) all unpaid rents and profits in respect of any period terminating on or prior to the date of possession shall not be apportioned between the parties on settlement but shall be recoverable by the Seller in accordance with clause 16.3;

(b) all rents and profits paid in advance of the date of possession shall be apportioned between the parties on settlement;

(c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Settlement Date shall be apportioned when received by either party.

162 If on settlement a deduction is made in respect of any Bond, the Buyer shall following settlement keep the Seller indemnified in that respect.

163 The Seller assigns to the Buyer, subject to the settlement of this Contract and with effect from the Settlement Date:

(a) the benefit of all conditions contained in any Leases on the part of the tenant or other occupier of the Land given in favour of the Seller or any predecessors in title of the Seller;

(b) the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of the Service Contractor); and

(c) the benefit of all Guarantees or Bonds held by the Seller in respect of the Leases which are capable of assignment,

provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned

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upon settlement shall not be assigned to the Buyer but be recoverable by the Seller and to that extent Section 117 of the *Property Law Act 1974* shall not apply.

164 The Buyer agrees to retain records relating to the Leases and to produce the Leases and any records relating to the Leases in any proceedings commenced by the Seller to recover any unpaid rents and profits.

165 The Seller shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.

17. LIABILITY OF BUYER

17.1 The Property shall be at the risk of the Seller until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Buyer. The Seller whilst continuing in possession will use the Property with reasonable care.

17.2 From the date of this Contract until settlement, the Seller shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Seller. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Seller shall immediately notify the Buyer in writing.

17.3 In addition to the obligations contained in clause 17.2, the Seller shall not without the prior written consent of the Buyer which shall not be unreasonably withheld:

- (a) accept or agree to accept a surrender of any Lease;
- (b) grant any Lease for any part of the Property which is vacant at the date of this Contract or which may become vacant prior to settlement;
- (c) consent to the variation of any Lease, proposed assignment or any other dealing concerning any Lease; or
- (d) negotiate or set new rent.

18. ACCESS

18.1 The Seller shall permit the Buyer or any person authorised by the Buyer to enter the Property on the Settlement Date for the purpose of checking the inventory of chattels (if any) and ascertaining the existence and state of repair of the Property.

18.2 The Seller shall permit any person authorised by the Buyer in writing upon reasonable written notice to enter the Property on one occasion for the purposes of reading any water, gas, electricity or other meter.

19. CONSENTS

If any consent is required by statute to the sale or the performance of any obligation under or by virtue of this Contract, this Contract is subject to such consent being given and the party who is required, by the statute, to obtain such consent ("**Applicant**") shall apply for the consent and pursue the application. The Applicant shall pay all costs and fees (other than the other party's solicitor's) in respect of the application. The other party shall if and when required by the Applicant immediately join in the application and/or shall supply such information as shall be reasonably required in support of the application. If the consent is refused or not granted by the Settlement Date then either party may by notice in writing to the other terminate this Contract.

20. REQUIREMENTS OF AUTHORITIES

20.1 If it is established that at the date of this Contract the Local Government has given to the Seller or some other person a notice in writing pursuant to sections 247 and 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* in respect of any building or structure on the Land and the notice is current at the Settlement Date the Buyer may by notice in writing to the Seller given on the Settlement Date terminate this Contract.

20.2 Except for any notice referred to in clause 20.1 or a tree order disclosed under s 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, any valid notice or order issued pursuant to any statute or by any Local Government or Court necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land:

(a) if issued before the date of this Contract shall be fully complied with by the Seller in a proper and workmanlike manner on or before the Settlement Date; or

(b) if issued on or after the date of this Contract shall be fully complied with by the Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.

If without default of the Buyer this Contract is terminated, the Seller shall pay to the Buyer on demand any amount expended by the Buyer in complying with any notice or order which was of the nature of a capital expenditure or has resulted in a benefit to the Seller.

21. PROPERTY ADVERSELY AFFECTED

21.1 If at the Contract Date:

- NOTE 2**
- (a) the Present Use is not lawful under the relevant town planning scheme;
 - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
 - (c) access or any service to the Land passes unlawfully through other land;
 - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
 - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or error as to the Seller's title to the Property;
 - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
 - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
 - (h) there is a charge against the Land under s104 of the *Foreign Acquisitions and Takeovers Act 1975*,
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

21.2 If no notice is given under clause 21.1, the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.

21.3 The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

21.4 Before the Settlement Date, the Seller must give the Buyer:

- (a) copies of all documents relating to any unregistered interests in the Property; and
- (b) further copies of details if those previously given cease to be complete or accurate.
- (c) if requested by the Buyer, copies of all Security Interests or sufficient details of the Security Interests to enable the Buyer to undertake a search of the PPSR.

22. NO WARRANTY ON PRESENT USE

No warranty is implied that the use of the Property as described in Item H is permissible under any town planning scheme and no compensation is payable if the particulars stated in Item H are not correct.

23. COSTS

The parties shall pay their own costs of and incidental to the sale and purchase but all stamp duty on this Contract and any duty in respect of the conveyance by the Seller to the Buyer shall be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

24. MERGER

Despite settlement and despite the registration of the transfer in favour of the Buyer, any general or special condition (or any part

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or parts thereof) to which effect is not given by settlement or registration and which is capable of taking effect after settlement or registration shall remain in full force and effect.

25. TIME AND PLACE FOR SETTLEMENT

25.1 Settlement shall be effected at such time and place as may be agreed upon by the parties. The time for settlement shall be between the hours of 9:00am and 4:00pm AEST on the Settlement Date.

25.2 In the absence of agreement as to place, settlement shall be effected in the city or town named in Item R at:

- (a) the office of a solicitor or financial institution nominated by the Seller; or
- (b) if the Seller does not make a nomination at the land registry office in or nearest to the city or town in Item R.

25.3 Despite clause 25.2 if a mortgage is to be discharged on settlement the Seller may by notice in writing to the Buyer given not less than 2 Business Days prior to the Settlement Date require settlement to take place at the office of the Seller's mortgagee in the city or town named in Item R or if such mortgagee does not have an office in that city or town at the office of such mortgagee in Queensland nearest to that city or town.

26. TIME OF THE ESSENCE

26.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement and except as otherwise provided in this Contract.

26.2 Clauses 26.2 to 26.8 apply if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:

- (i) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
- (ii) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.

26.3 Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.

26.4 An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.

26.5 When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.

26.6 When the Suspension Period ends, whether notice under clause 26.5 has been given or not, either party may give the other party a Notice to Settle.

26.7 A Notice to Settle must be in writing and state:

- (i) that the Suspension Period has ended; and
- (ii) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
- (iii) that time is of the essence.

26.8 When Notice to Settle is given, time is again of the essence of the contract.

26.9 In this clause 26:

- (i) "**Affected Party**" means a party referred to in clause 26.2;
- (ii) "**Delay Event**" means:
 - (a) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
 - (b) riot, civil commotion, war, invasion or a terrorist act;
 - (c) an imminent threat of an event in paragraphs (a) or (b); or
 - (d) compliance with any lawful direction or order by a Government Agency;

(iii) "**Government Agency**" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;

(iv) "**Settlement Obligations**" means, the obligations of the buyer and Seller under clause 4;

(v) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

27. NOTICES, COMMUNICATIONS, AUTHORITY DIRECTIONS, ETC

27.1 Notices under this contract must be in writing.

27.2 Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.

27.3 Notices under this contract or required to be given by law may be given by:

- (a) delivering or posting to the other party or its solicitor; or
- (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
- (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).

27.4 Subject to clause 27.5, a notice given after this contract is entered into in accordance with clause 27.3 will be treated as given:

- (a) 5 Business Days after posting;
- (b) if sent by facsimile, at the time indicated on a clear transmission report; and
- (c) if sent by email, at the time it is sent.

27.5 Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.

27.6 If two or more notices are treated as given at the same time under clause 27.5, they will be treated as given in the order in which they were sent or delivered.

27.7 Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

27.8 For the purposes of clause 27.3(c) and clause 36.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

28. REMOVAL OF FIXTURES FITTINGS AND CHATTELS

28.1 Unless otherwise agreed between the parties any property not sold under this Contract (other than property of any tenant or other occupier of the Land) shall be removed from the Land prior to delivery of possession.

28.2 The Seller shall at the Seller's own expense reinstate and make good prior to delivery of possession any damage done to the improvements in removing that property and if the Seller fails to do so the Buyer may do so and recover the costs of so doing from the Seller as a liquidated debt.

28.3 Any of that property not so removed shall be deemed abandoned by the Seller and the Buyer may without prejudice to any other remedy complete this Contract and appropriate or remove or otherwise dispose of that property as the Buyer thinks fit.

28.4 Any costs incurred by the Buyer in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Buyer from the Seller and the Seller shall indemnify and hold indemnified the Buyer from and against all claims, demands, actions, costs, judgments and expenses which the Buyer may suffer or incur by reason of any other person claiming any interest in that property.

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29. CHATTELS

- 29.1** Title to any chattels agreed to be sold by or under this Contract shall pass at settlement.
- 29.2** The Seller assigns to the Buyer subject to the settlement of this Contract and with effect from the Settlement Date, the benefit of all warranties capable of assignment held by the Seller in respect of the chattels agreed to be sold. The Seller shall deliver to the Buyer at settlement all documents in the possession or control of the Seller evidencing the warranties referred to in this clause which would be sufficient to enable the Buyer to enforce those warranties.

30. APPOINTMENT OF AGENT

In the absence of any specific appointment the Seller by executing this Contract confirms the appointment of the Seller's Agent (jointly with any other agent in conjunction with whom the Seller's Agent has sold) as the agent of the Seller to introduce a buyer.

31. FINANCE CLAUSE

- 31.1** If Items S, T and U are not deleted, this Contract is subject to the Buyer obtaining approval of a loan from the lender or class of lender specified in Item S on or before the approval date specified in Item T not less than the amount of loan specified in Item U on terms satisfactory to the Buyer. The Buyer must take reasonable steps to obtain the approval.

NOTE 7

- 31.2** The Buyer may give notice to the Seller that:
- (a) approval has not been obtained by the approval date and the Buyer terminates this contract; or
 - (b) the finance condition has been either satisfied or waived by the Buyer.
- 31.3** The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 31.2 by 5pm on the approval date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 31.4** The Seller's right under clause 31.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 31.2.

32. PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS

32.1 Seller's Statement

Where the Property is sold subject to any Lease or Service Contract, the Seller states that, except as disclosed in this Contract, each of the following statements shall be accurate at the Settlement Date:

- (a) the particulars in the Lease Schedule and the Service Contract Schedule are true and correct;
- (b) that no circumstances exist as far as the Seller is aware that would render any Lease liable to forfeiture nor has the Seller agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Buyer prior to execution of this Contract;
- (d) the Seller is not aware of any breach by the Seller of any Lease or Service Contract;
- (e) where any of the Leases are subject to the application of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Seller apply:
 - (i) as far as the Seller is aware the Seller has in all respects complied with the Act in relation to the Leases;
 - (ii) no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
 - (iii) there are no mediation agreements, Queensland Civil and Administrative Tribunal proceedings or orders in existence in respect of any Lease;
 - (iv) no tenant has notified the Seller requesting the right to

renew any Leases for a further period;

- (v) no tenant has made a claim upon the Seller to pay compensation for loss or damage suffered by the tenant by virtue of sections 43, 46G or 46K of the Act nor are there any circumstances existing to the Seller's knowledge which might give rise to a claim for such compensation.

32.2 Inaccurate Statement

If a statement contained in clause 32.1 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

32.3 Acceptance of Lease and Service Contract Terms

- (a) Within 7 days of the date of this Contract, the Seller will deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts together with a written statement that they constitute the whole of every agreement or arrangement with each of the tenants stated in those Leases or with each of the Service Contractors in those Service Contracts.

(b) If:

- (i) the Seller does not deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(a); or
- (ii) true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(a) and the Buyer is not satisfied with any of the terms and conditions of any Lease or Service Contract,

then in the case of clause 32.3(b)(i) the Buyer shall be entitled to terminate this Contract by notice in writing to the Seller or in the case of clause 32.3(b)(ii) the Buyer shall be entitled to terminate this Contract by written notice to the Seller within 7 days from the date upon which all Leases and Service Contracts have been delivered.

- (c) If the Buyer does not give written notice to the Seller pursuant to clause 32.3(b)(i) or 32.3(b)(ii), the Buyer agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Seller in the Lease Schedule and the Service Contract Schedule from the Settlement Date as if the Buyer were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Seller.
- (d) With respect to Service Contracts, clause 32.3(c) will apply subject to the consent of the Service Contractor.
- (e) The amounts paid or payable in respect of the Service Contracts shall be outgoing for the purposes of clause 15 and shall be apportioned accordingly.

33. FOREIGN BUYER APPROVAL

NOTE 10 The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

34. GOODS AND SERVICES TAX

34.1 Definitions

Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

34.2 Reference Schedule and Notes

The Reference Schedule and the Notes to Completion are part of this clause 34.

34.3 Taxable Supply

This clause 34 applies where the transaction is:

- (a) a Taxable Supply; or
- (b) not a Taxable Supply because it is the Supply of a Going Concern.

34.4 Purchase Price Includes GST

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If this clause 34.4 applies, the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

34.5 Purchase Price Does Not Include GST

If this clause 34.5 applies, the Purchase Price does not include the Seller's liability for GST on the Supply of the Property. The Buyer must on the Settlement Date pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the Supply of the Property.

34.6 Margin Scheme

Warning: The Seller is warranting that the Margin Scheme can apply. If in doubt about using the Margin Scheme you should seek professional advice.

If this clause 34.6 applies:

- (a) the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property;
- (b) the Seller:
 - (i) must apply the Margin Scheme to the Supply of the Property; and
 - (ii) warrants that the Margin Scheme is able to be applied;
- (c) if the Seller breaches clause 34.6(b)(i) or its warranty under clause 34.6(b)(ii) then:
 - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date.
 - (ii) if the Buyer does not terminate this Contract under clause 34.6(c)(i) or does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable for the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
 - (iii) the Buyer is entitled to compensation from the Seller if there is a breach of clause 34.6(b).

34.7 If the Supply is a Going Concern

Warning: The parties are providing certain warranties under this clause. If there is doubt about whether there is a Supply of a Going Concern you should seek professional advice.

If this clause 34.7 applies:

- (a) the Purchase price does not include any amount for GST;
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (c) the Seller warrants that:
 - (i) between the date of this Contract and the Settlement Date the Seller will carry on the Enterprise; and
 - (ii) the Property (together with any other things that must be provided by the Seller to the Buyer at the Settlement Date under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;
- (d) the Buyer warrants that at the Settlement Date it is Registered or Required to be Registered under the GST Act;
- (e) if either of the warranties in clause 34.7(c) is breached:
 - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Settlement Date;
 - (ii) if the Buyer does not terminate this Contract then, at the Settlement Date, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property;
 - (iii) if the Buyer does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will

receive for GST payable in respect of the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;

- (iv) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty;
- (f) if the warranty in clause 34.7(d) is not correct the Buyer must pay to the Seller an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand;
- (g) if for any reason other than a breach of a warranty by the Seller or the Buyer this transaction is not a Supply of a Going Concern, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand.

34.8 Adjustments

Where this Contract requires an adjustment or apportionment of outgoings or rent and profits of the Property, that adjustment or apportionment must be made on the amount of the outgoing, rent or profit exclusive of GST.

34.9 Tax Invoice

Where GST is payable on the Supply of the Property, the Seller must give to the Buyer a Tax Invoice at the Settlement Date.

34.10 No Merger

To avoid doubt, the clauses in this clause 34 do not merge on settlement.

34.11 Remedies

The remedies provided in clauses 34.6(c), 34.7(e) and 34.7(f) are in addition to any other remedies available to the aggrieved party.

35. BUILDING AND PEST INSPECTION REPORTS

35.1 This contract is conditional on the Buyer obtaining a written building report and a written pest report (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).

35.2 The Buyer must give notice to the Seller that:

- (1) a satisfactory report under clause 35.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 35.1 has been either satisfied or waived by the Buyer.

35.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.

35.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 35.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

35.5 The Seller's right under clause 35.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 35.2

36. ELECTRONIC SETTLEMENT

36.1 Application of Clause

- 36.1.1. Clause 36 applies if the Buyer, Seller and each Financial Institution involved in the transaction agree to an Electronic Settlement using the same ELNO System and overrides any other provision of this Contract to the extent of any inconsistency.
- 36.1.2. Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 36.1.1.
- 36.1.3. Clause 36 (except clause 36.5.3) ceases to apply if either party gives notice under clause 36.5 that settlement will not be an Electronic Settlement.

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36.2 Completion of Electronic Workspace

- 36.2.1. The parties must:
- (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
 - (b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- 36.2.2. If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- 36.2.3. If any part of the Purchase Price is to be paid to discharge an Outgoing:
- (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
 - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current invoice for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- 36.2.4. If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
- (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days prior to Settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
 - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 36.2.4(a);
 - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract; and
 - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

36.3 Electronic Settlement

- 36.3.1. Clauses 10.2, 10.3, 25.2 and 25.3 do not apply.
- 36.3.2. Payment of the balance of the Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 4.1.
- 36.3.3. The Seller and Buyer will be taken to have complied with:
- (a) clause 4.2(c),(e) and (f); and
 - (b) clause 4.4(d) and (e),
- (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- 36.3.4. The Seller will be taken to have complied with clauses 4.1(b), (c), (d), (f), (g) (h), (i), (j) and (k) and clause 5 if:
- (a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and
 - (b) in relation to any other document or thing, the Seller's Solicitor:
 - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and
 - (ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
 - (iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- 36.3.5. A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- 36.3.6. Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.

- 36.3.7. Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

36.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Office of State Revenue, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

36.5 Withdrawal from Electronic Settlement

- 36.5.1. Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- 36.5.2. A notice under clause 36.5.1 may not be given later than 5 Business Days before the Settlement Date unless an Electronic Settlement cannot be effected because:
- (a) the transaction is not a Qualifying Conveyancing Transaction; or
 - (b) a party's solicitor is unable to complete the transaction due to death, a loss of legal capacity or appointment of a receiver or administrator (or similar) to their legal practice or suspension of their access to the ELNO System; or
 - (c) the Buyer's or Seller's Financial Institution is unable to use the relevant ELNO System to effect Electronic Settlement.
- 36.5.3. If clause 36.5.2 applies:
- (a) the party giving the notice must provide satisfactory evidence of the reason for the withdrawal; and
 - (b) the Settlement Date will be extended to the date 5 Business Days after the Settlement Date.

36.6 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

36.7 Definitions for clause 36

In clause 36:

"Digitally Sign" and "Digital Signature" have the meaning in the ECNL.

"ECNL" means the Electronic Conveyancing National Law (Queensland).

"Electronic Conveyancing Documents" has the meaning in the Land Title Act 1994.

"Electronic Lodgement" means lodgement of a document in the Land Registry in accordance with the ECNL.

"Electronic Settlement" means settlement facilitated by an ELNO System.

"Electronic Workspace" means a shared electronic workspace within an ELNO System that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement.

"ELNO" has the meaning in the ECNL.

"ELNO System" means a system provided by the ELNO for facilitating Financial Settlement and Electronic Lodgement.

"Financial Settlement" means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule.

"Financial Settlement Schedule" means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts.

"Qualifying Conveyancing Transaction" means a transaction that is not excluded for Electronic Settlement by the rules issued by the relevant ELNO, Office of State Revenue, Land Registry, or a Financial Institution involved in the transaction.

37. ELECTRONIC CONTRACT AND DISCLOSURE

37.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

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37.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

38. COUNTERPARTS

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

NOTES AND WARNINGS

NB. where any specific items are not required delete and initial

NOTE 1 Insert, in Item A, the date of signing by the last party to sign.

NOTE 2 Describe, in Item H, the actual use presently being made of the Land and/or the improvements, e.g. commercial etc.

WARNING - Refer to clause 21.1(a). **Before this Contract is signed the Seller should ensure that the present use described in Item H is a lawful use.**

For example, if a business is being carried on at a dwelling house in a residential zone, that use may be unlawful unless town planning consent exists. **This warning applies whether the Buyer intends to continue the use stated in Item H or not.** If the use is not lawful or if there is a doubt about the use, this should be drawn to the Buyer's attention and, if the Buyer agrees, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 21.1(a).

NOTE 3 If freehold, do not complete "Type of Holding" or "Lease No".

NOTE 4 Describe in general terms, e.g. factory, warehouse etc.

NOTE 5 Particulars should be inserted in the Lease Schedule and the Service Contract Schedule.

NOTE 6 The Contract Rate is published each month in "The Proctor".

NOTE 7 If this Contract is **to be subject to finance** then Items S, T and U must be completed in every respect and Item V must be deleted and initialled.

If this Contract is **not to be subject to finance** Items S, T and U must be deleted and initialled and Item V shall apply.

If known, state name of lender in Item S. If not known, state class, e.g. trading bank, savings bank, building society, insurance company, credit union, or other class of lending institution. Do not insert the words "finance company" but insert the specific name (or names) of a finance company.

The date in Item T should be at least 14 days prior to the Settlement Date.

The dollar amount of the loan being sought must be inserted in Item U. Do not insert the words "sufficient to complete this purchase" or words of a similar effect.

NOTE 8 The Deposit Holder should sign with his or her personal signature.

If the Deposit Holder is a partnership, a member of the partnership should sign in the partnership name.

If the Deposit Holder is a company, the acknowledgment should be signed in accordance with the *Corporations Act 2001*, s 127 or by a person duly authorised to sign acknowledgments of Deposit Holder on behalf of the company.

NOTE 9 A Seller which is a corporation should note that to ensure the Property is free from Encumbrances it may be necessary to provide evidence at settlement that the Property has been released from or is not subject to a security interest given by the Seller.

NOTE 10 If this Contract is to be made subject to the approval of the Commonwealth Treasurer being obtained, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 33.

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