

C O N T R A C T C O M M E R C I A L L A N D A N D B U I L D I N G S

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REIQ

Adopted by The Real Estate Institute of Queensland
Limited and approved by the Queensland Law
Society Incorporated for conveyances of Torrens
Title and Crown Leasehold Title of Commercial
Land and Buildings.



**Queensland Law
Society Inc**

THIS CONTRACT IS MADE BETWEEN THE VENDOR AND THE PURCHASER. THE VENDOR AGREES TO SELL AND THE PURCHASER AGREES TO BUY THE PROPERTY, SUBJECT TO THE CONDITIONS OF THIS CONTRACT, FOR THE PURCHASE PRICE.

1

This Contract comprises the following parts:

- (a) Items Schedule;
- (b) Lease Schedule;
- (c) Service Contract Schedule;
- (d) Standard Commercial Conditions; and
- (e) any Special Conditions.

2

Where there is any discrepancy or inconsistency between a part of this Contract and any other part, the following descending order of precedence of the parts shall apply to resolve the discrepancy or inconsistency:

- (a) any Special Conditions;
- (b) Items Schedule;
- (c) Lease Schedule;
- (d) Service Contract Schedule;
- (e) Standard Commercial Conditions.

3

Unless inconsistent with the context or subject matter:

- (a) "Items Schedule" means the schedule called Items Schedule in this Contract;
- (b) "Lease Schedule" means the schedule called Lease Schedule in this Contract;
- (c) "Service Contract Schedule" means the schedule called Service Contract Schedule in this Contract;
- (d) "Special Conditions" means any written conditions endorsed on or annexed to this form;
- (e) "Standard Commercial Conditions" means the Standard Commercial Conditions of Sale – Commercial Land and Buildings (Second Edition GST Reprint) adopted by The Real Estate Institute of Queensland Limited and approved by the Queensland Law Society Incorporated.

4

The Vendor and the Purchaser each acknowledge having received a copy of the Standard Commercial Conditions at the time of signing this Contract.

ITEMS SCHEDULE

NOTE 1	A	Contract Date:	_____
	B	Vendor's Agent: Address: Licence No: ABN	_____ _____ _____ _____ Facsimile _____ Phone _____ _____ Email Address _____
	C	Vendor/s: Address: ABN	<u>Leon Mark Heath</u> <u>41-47 Digger Street, Cairns Qld 4870</u> _____ _____ Facsimile _____ Phone <u>07 4051 2599</u> _____ Email Address _____
	D	Vendor's Solicitor: Address: ABN	<u>Cooper Grace Ward (Neil Hawthorne)</u> <u>GPO Box 834, Brisbane Qld 4001</u> _____ _____ Facsimile <u>07 3221 4356</u> _____ Phone <u>07 3231 2444</u> <u>95 591 986 639</u> _____ Email Address <u>neil.hawthorne@cgw.com.au</u>
	E	Purchaser/s: Address: ABN	<u>Rodney Elliott Maule and Sandra Annette Maule as trustees of the Maule Family</u> <u>Superannuation Fund</u> <u>54 Jarman Street, Barlows Hill, Yeppoon Qld 4703</u> _____ _____ Facsimile <u>07 4939 8272</u> _____ Phone <u>07 4939 8272</u> _____ Email Address _____
	F	Purchaser's Solicitor: Address: ABN	<u>Charltons Lawyers (Michael Madders)</u> <u>PO Box 518 Bundaberg Qld 4670</u> _____ _____ Facsimile <u>07 4152 0848</u> _____ Phone <u>07 4152 2311</u> _____ Email Address _____
CLAUSE 1.1(v)	G	Stakeholder:	<u>Cooper Grace Ward Lawyers</u> _____ _____ Facsimile <u>07 3221 4356</u> _____ Phone <u>07 3231 2444</u>
	H	PARTICULARS OF LAND SOLD: Address:	<u>Reef Palms Motel, 41- 47 Digger Street, Cairns Qld 4870</u> _____
NOTE 2 (SEE WARNING)		Present Use (if any) Description:	<u>Motel</u> <u>Lot 2 on RP 819383</u>
		County Title Reference Area:	<u>Nares</u> _____ Parish: <u>Cairns</u> <u>21576031</u> <u>2622 m²</u> _____ (more or less)
NOTE 3		Type of Holding: Local Government:	<u>Freehold</u> _____ Lease No: _____ <u>Cairns City Council</u>
NOTE 4	I	IMPROVEMENTS INCLUDED IN SALE: 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 televisions or satellite antennae or dishes in-ground shrubs and all fixtures as inspected by the Purchaser. Exclusions:	<u>Motel accommodation, pool, reception & communal & other facilities as inspected</u> <u>The personal property of the Vendor</u>
	J	OTHER CHATTELS INCLUDED IN SALE:	<u>Refer to the Inventory in the Interdependent Contract</u> (Attach inventory if insufficient space)
	K	THE LAND IS SOLD AS:	<u>Freehold</u> (subject to the reservations exceptions and conditions in the deed of grant) (Cross out that which does not apply) <u>Leasehold</u> (subject to the conditions of the Crown leasehold title)
	L	ENCUMBRANCES: (If the Property is sold free from Encumbrances, insert "Nil". If the Property is sold subject to Encumbrances they must be specifically described in this Item.)	<u>Nil</u>
NOTE 5	M	LEASES AND SERVICE CONTRACTS:	<u>See Lease Schedule and Service Contract Schedule</u>
	N	PURCHASE PRICE:	<u>\$ \$3,250,000</u>
CLAUSE 3	O	DEPOSIT:	<u>\$ \$325,000</u>
CLAUSE 11 & NOTE 6	P	DEFAULT INTEREST:	<u>12%</u> _____ % simple interest per annum
CLAUSE 25.3	Q	DATE FOR COMPLETION:	<u>31 August 2007</u>

CLAUSE 25.1 & 25.2

R CITY OR TOWN FOR COMPLETION: Brisbane CBD

FINANCE

SUBJECT TO FINANCE: Yes

NOTE 7
CLAUSE 31

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.

NOT SUBJECT TO FINANCE:

IF THIS CONTRACT IS NOT TO BE SUBJECT TO FINANCE THEN ITEMS S, T AND U MUST BE DELETED AND INITIALLED AND ITEM V SHALL APPLY.

S	LENDER OR CLASS OF LENDER: Not Applicable – this Contract is not subject to finance.
T	THE APPROVAL DATE: _____
U	AMOUNT OF LOAN: \$ _____
V	THIS CONTRACT IS NOT TO BE SUBJECT TO FINANCE AND CLAUSE 31 OF THE STANDARD COMMERCIAL CONDITIONS DOES NOT APPLY.

GST

GOODS AND SERVICES TAX – WARNING

Marking the GST Items in the Items Schedule may have significant consequences for the Vendor and Purchaser. The Vendor and Purchaser should seek professional advice about completion of the GST Items and not rely on the Vendor's 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	<i>Going Concern:</i>	<p>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.</p> <p>Is this a sale of a Going Concern? Yes <input checked="" type="checkbox"/> (but see Special Conditions)</p> <p>If yes, clause 34.7 (If the Supply is a Going Concern) applies.</p> <p>Otherwise clause 34.7 (If the Supply is a Going Concern) does not apply.</p> <p>If the Yes box is marked, do not complete Items GST2 and GST3.</p>
GST2	<i>Margin Scheme:</i>	<p>Is the Margin Scheme to apply to the sale of the Property? Yes <input type="checkbox"/></p> <p>If yes, clause 34.6 (Margin Scheme) applies.</p> <p>Otherwise clause 34.6 (Margin Scheme) does not apply.</p> <p>The Vendor must not apply the Margin Scheme to the Supply of the Property if clause 34.6 does not apply.</p> <p>If the Yes box is marked, do not complete Items GST1 and GST3.</p>

GST3

*Inclusive or Exclusive
Purchase Price:*

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

Mark 1 box only

Does the Purchase Price include GST?

Yes

If Yes, clause 34.4 (Purchase Price Includes GST) applies.

No

If No, clause 34.5 (Purchase Price Does Not Include GST) applies.

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

See Clause 32 of Standard Commercial Conditions

PROPERTY ADDRESS 41-47 Digger Street, Cairns Qld 4870

LEASE 1 Name of Tenant: Casmit Investments Pty Ltd
 Use: _____
 Location/Tenancy No.: _____
 Area of Tenancy (m² approx.): _____
 Current Rental per Annum: \$ _____
 Current Lease 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/month[†]

LEASE 2 Name of Tenant: Nil
 Use: _____
 Location/Tenancy No.: _____
 Area of Tenancy (m² approx.): _____
 Current Rental per Annum: \$ _____
 Current Lease 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/month[†]

* Attach further Schedule if insufficient space

† Strike out as required.

See Clause 32 of Standard Commercial Conditions

PROPERTY ADDRESS 41-47 Digger Street, Cairns Qld 4870

CONTRACT 1 Service Contractor: _____
Service Performed: _____
Cost: \$ _____ per annum/quarter/month†

CONTRACT 2 Service Contractor: _____
Service Performed: _____
Cost: \$ _____ per annum/quarter/month†

CONTRACT 3 Service Contractor: _____
Service Performed: _____
Cost: \$ _____ per annum/quarter/month†

CONTRACT 4 Service Contractor: _____
Service Performed: _____
Cost: \$ _____ per annum/quarter/month†

CONTRACT 5 Service Contractor: _____
Service Performed: _____
Cost: \$ _____ per annum/quarter/month†

* **Attach further Schedule if insufficient space**

† **Strike out as required.**

SPECIAL CONDITIONS

See Annexure "A"

The approval of the Queensland Law Society Incorporated and the adoption by The Real Estate Institute of Queensland Limited does not extend to any alterations to the printed text of the Standard Commercial Conditions or to any Special Conditions of this Contract. The Standard Commercial Conditions 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 Conditions is altered, or Special Conditions are included, it is recommended that the Vendor and the Purchaser consult their respective legal advisers prior to signing this Contract.

Witness	Vendor
Witness	Purchaser

NOTE 8

STAKEHOLDER'S ACKNOWLEDGMENT

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

Stakeholder

Licence No.

This form was adopted by The Real Estate Institute of Queensland Limited April 2001

This form was approved by the Queensland Law Society Incorporated April 2001

11
A

SPECIAL CONDITIONS

To Contract of Sale between:

Leon Mark Heath

(Vendor)

and

Rodney Elliott Maule and Sandra Annette Maule as trustees for the Maule Family Superannuation Fund

(Purchaser)

Property: Lot 2 on RP 819383 County Nares Parish Cairns Title Reference 21576031

1. DEFINITIONS

1.1 The following definitions also apply in this Contract.

Authority means any state, Federal or semi or local government, statutory or public authority, instrumentality or body.

Claim means, in relation to any person or corporation, a claim, action, proceeding, damage, loss, expense, cost or liability incurred by or to be made or recovered by or against the person or corporation, however arising or whether present, unascertained, immediate, future or contingent and includes, without limitation, a claim for compensation.

Object means to make any Claim against the Vendor (before or after completion), raise any objection or requisition, rescind or terminate this Contract or delay completion.

Services means the services provided to the Property (for example drainage, electricity, garbage, gas, sewerage, trade waste and water supply).

2. INTERDEPENDENCY

2.1 This Contract is subject to completion of the Business Contract between Casmit Investments Pty Ltd ACN 105 060 893 and the Purchaser signed on or about the date of this Contract (the Interdependent Contract) for the business known as Reef Palms Motel.

2.2 Completion of this Contract must be effected contemporaneously with completion under the Interdependent Contract. If the Completion Date of this Contract is extended then the Completion Date of the Interdependent Contract will be extended accordingly and vice versa.

2.3 A breach of the terms of the Interdependent Contract will be deemed to be a breach of the terms of this Contract and vice versa.

2.4 If the Interdependent Contract is terminated then this Contract automatically ends and vice versa

3. GST

3.1 Standard Commercial Condition 34 is replaced with the following.

3.2 The parties agree that the sale of the Property and the Vendor's rights under the Lease constitutes the supply of a Going Concern as defined in the GST Act.

3.3 The Vendor covenants that it will continue to carry on the Going Concern until Completion.

- 3.4 The Vendor and the Purchaser each warrant that, they will be registered or required to be registered (within the meaning of those expressions in the GST Act) on the Date for Completion.
- 3.5 The consideration payable by the Purchaser has been fixed without regard to the impact of GST.
- 3.6 If, despite the provisions of this Agreement all or part of the Purchase Price is or is deemed to be consideration for a Taxable Supply, the GST payable in respect of that consideration must be paid to the Vendor as an additional amount on the Date of Completion or within two Business Days after the date on which the Vendor delivers a Tax Invoice, whichever is later.
- 3.7 In this special condition 3 Lease means the agreement between the Vendor and Casmit Investments Pty Ltd under which Casmit Investments Pty Ltd occupies the Property for the purpose of conducting a Motel business from the Property. The definition of Lease in the Standard Commercial Conditions is to be read subject to this special condition 3, with respect to any inconsistency.

4. INTRODUCTION BY VENDOR'S AGENT

- 4.1 The Purchaser warrants that it was not introduced to the Property or the Vendor by any real estate agent or person other than the Vendor's Agent named in the Items Schedule.
- 4.2 The Purchaser indemnifies the Vendor against any Claim to pay commission or any expenses to any real estate agent or person other than the Vendor's Agent which arises from the Purchaser's breach of the warranty in commission or any expenses to any real estate agent that is due to the Purchaser's breach of warranty in clause 4.1.

5. CONFIDENTIALITY

The Parties agree to keep the terms and conditions of this Contract and the Interdependent Contract and the discussions and negotiations leading to their execution strictly confidential and agree not to disclose any such details or particulars without the prior written consent of the other party except:

- (a) To a party's legal or accounting advisors;
- (b) If compelled by an order of a Court of law; or
- (c) If the information is in the public domain.

6. REQUIREMENTS OF AUTHORITIES

- 6.1 Standard Commercial Condition 20 is replaced by the following.
- 6.2 The Purchaser must, at its expense, comply with any valid notice or order issued on or after the Date for Completion, pursuant to any statute or by any Authority necessitating the doing or work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land.
- 6.3 The Purchaser indemnifies the Vendor in respect of any costs or expenditure of money to comply with any notice or order that the Purchaser does not comply with.

7. DUE DILIGENCE ENQUIRES

- 7.1 This Agreement is subject to and conditional upon the Purchaser conducting such enquiries and investigations with respect to the Property that it wishes to undertake (the Due Diligence Enquiries) by 15 August 2007 (the Due Diligence Date) and being satisfied in its sole discretion with those enquiries and investigations.
- 7.2 If the Purchaser is not satisfied in its sole discretion with its Due Diligence Enquiries, then it may terminate this contract by giving written notice to the Purchaser given on or before 5.00pm on the Due Diligence Date.

- 7.3 If the Purchaser notifies the Vendor that it is satisfied with its Due Diligence Enquires in writing, on or before 5.00pm on the Due Diligence Date or if the Vendor receives no notice in writing from the Purchaser as to whether or not it is satisfied with its Due Diligence Enquiries by 5.00pm on the Due Diligence Date then clause 7.1 will be deemed to be satisfied.
- 7.4 If the Purchaser terminates this Contract pursuant to clause 7.2 then:
- (a) this Contract will be at an end; and
 - (b) the Interdependent Contract will be at an end; and
 - (c) the Deposit must be refunded to the Purchaser.
- 7.5 Clause 7.1 has been inserted for the benefit of the Purchaser. The Purchaser may waive the benefit in special condition 7.1 at any time by notice in writing given to the Purchaser at any time before 5.00pm on the Due Diligence Date in which event clause 7.1 will be deemed to be satisfied.

8. PROPERTY ADVERSELY AFFECTED

- 8.1 Standard Commercial Condition 21.1 is deleted.
- 8.2 Despite anything else in this Contract, after the satisfaction of Special Condition 7.1, the Purchaser warrants that:
- (a) it is purchasing the Property after having made all relevant investigations and having undertaken all relevant searches and enquiries and that it has satisfied itself fully with respect to the Property.
 - (b) Subject to any existing services to the Property or affecting the Property, the Purchaser must not Object because of:
 - (i) The nature, location, availability or non-availability of any service;
 - (ii) A service for the Property being a joint service or passing through another property, or any service for another property passing through the Property;
 - (iii) If any Authority's service passes in, over or through the Property;
 - (iv) Whether or not the Property is subject to or has the benefit of any rights or easements in respect of any service, drain, manhole, vent or main, pipe or connection for the service;
 - (v) Any defects in the service;
 - (vi) Any underground or surface stormwater drain passes through or over the Property or because any manhole or vent is on the Property;
 - (vii) If any rainwater downpipe is connected to the sewer.
 - (c) The Purchaser is deemed
- to have purchased the Property on an as is where is basis and to be satisfied fully with respect to the Property and everything concerning the Property including (without limitation):
- (i) The extent state and condition of the Property;
 - (ii) The value of the Property;
 - (iii) Any financial (actual or potential) return from or expected or projected return from the Property
 - (iv) The use as to which the Property concurrently be put under any relevant legislation;

- (v) The potential future use as to which the Property could be put under relevant legislation; and
 - (vi) The nature and extent of any risks associated with ownership of the Property; and
 - (vii) Subject to special condition 7.5, to have relied solely upon its own investigations and those of its advisors and agents in entering into and completing this Contract and not on any alleged representation or statement made by the Vendor or the Vendor's Agent or any other person acting on behalf of the Vendor whether oral or written.
- 8.3 The Vendor warrants that to the best of its knowledge and belief all information included in the :Purchaser's Information Pack given to prospective purchasers by the Vendor's Agent is true and correct and not misleading in any material way.
- 8.4 The Purchaser, to the full extent permitted by law, releases the Vendor, its employees, contractors and agents from any Claim to the Purchaser (or any person claiming through or on behalf of the Purchaser) in respect of the condition of the Property and all other matters and things directly or indirectly concerning or affecting the Property.

9. LIABILITY OF PURCHASER

- 9.1 The Property will be at the risk of the Vendor until the Date of Completion when risk will pass to the Purchaser. The Vendor, whilst the Property is at its risk, will use the Property with reasonable care.

10. CAVEATS REGISTERED ON COMPLETION

- 10.1 Despite Standard Commercial Condition 4, the Vendor will be taken to have complied with its obligations under this Contract if it delivers to the Purchaser on the Date for Completion a withdrawal of caveat (capable of immediate registration) in relation to any caveat registered over the Property on completion.

11. VARIATIONS TO STANDARD COMMERCIAL CONDITIONS

- 11.1 The following Standard Commercial Conditions are deleted from this Contract:

4(i) and (j), 8, 9.2 and 9.3, 17.1, 31.1.

- 11.2 Standard Commercial Condition 32 is varied by deleting reference to "Lease"

12. VENDOR'S BETTER OFFER

- 12.1 The Purchaser agrees and acknowledges that whilst this Contract is subject to and conditional upon the satisfaction or deemed satisfaction of clause 7.1, the Vendor may continue to offer the Property for sale to interested third parties (Third Party Buyers).
- 12.2 Should the Vendor receive an offer from a Third Party Buyer upon terms which the Vendor determines, in the Vendor's absolute discretion, are more favourable than the terms contained in this Agreement and the Interdependent Contract (viewed as a whole) then the Vendor may give the Purchaser written notice of the offer received from the third Party Buyer.
- 12.3 The Purchaser must within two business days of receipt of a notice from the Vendor pursuant to clause 12.2, but not including the day upon which the Purchaser receives that notice, give the Vendor written notice that:
- (a) the Purchaser elects to waive the benefit of clause 7.1 and make this Contract unconditional with respect to its Due Diligence Enquiries; or
 - (b) elect to terminate this Contract, in which this Contract will be at an end and the Vendor must refund the Deposit to the Purchaser.

12.4 If the Vendor receives no written notice from the Purchaser in accordance with clause 12.3, then the Vendor may terminate this Contract in which event this Contract will be at an end and the Vendor must refund the Deposit to the Purchaser.

The Vendor is not obliged to make an election pursuant to this clause 12.4. If the Vendor makes no election then this Contract will remain valid and binding on the parties and both parties are bound to fully observe its terms.

.....

Vendor

.....

Witness

.....

Purchaser

.....

Witness

NLH10041484 1553666v2

STANDARD COMMERCIAL CONDITIONS COMMERCIAL LAND AND BUILDINGS

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Adopted by The Real Estate Institute of Queensland and approved by
the Queensland Law Society Incorporated for conveyances of Torrens
Title and Crown Leasehold Title of Commercial Land and Buildings.



Queensland Law
Society Inc

1. INTERPRETATION

- 1.1 In this Contract, unless inconsistent with the context or subject matter:
- (a) “**Agent**” includes auctioneer;
- (b) “**Bond**” includes any security for payment of Rent or performance of any obligation pursuant to any Lease;
- (c) “**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in the city or town named in Item R;
- NOTE 6** (d) “**Contract Rate**” means the rate of interest fixed from time to time by the Queensland Law Society Incorporated (by resolution of its Council) for the purposes of clause 11;
- (e) “**Date for Completion**” 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;
- (f) “**Deposit**” means the sum stated in Item O;
- (g) “**Encumbrances**” includes but is not limited to encumbrances which are not registered and an encumbrance created or arising under or by virtue of a statute;
- (h) “**Enterprise**” means the enterprise (as the term is defined in the GST Act) carried on using the Property;
- (i) “**Financial Institution**” means bank, building society or credit union;
- (j) “**GST**” means the goods and services tax under the GST Act;
- (k) “**GST Act**” means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (l) “**Guarantee**” means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
- (m) “**ITAA**” means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
- (n) “**Item**” means an item of particulars in the Items Schedule;
- (o) “**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 or combinations necessary for the purposes of fastening or unfastening any such lock;
- (p) “**Land**” means the land described in Item H;
- (q) “**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;

- (r) “**Local Government**” means the relevant local government (and includes the Brisbane City Council);
- (s) “**Property**” means the property listed in Items H, I and J and includes any part of the Property;
- (t) “**Purchase Price**” means the sum stated in Item N;
- (u) “**Purchaser**” means the party named in Item E;
- (v) “**Rent**” means base rent, turnover rent, percentage rent, contributions to outgoing and any money payable by a tenant to the Vendor;
- (w) “**Service Contract**” for the purposes of clause 32 of this Contract means any contract between the Vendor 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;
- (x) “**Solicitor**” means a solicitor currently entitled to practice in Australia whether acting as principal or agent;
- (y) “**Stakeholder**” means the person named in Item G or, where no person is named in Item G, the Vendor’s Agent;
- (z) “**Vendor**” means the party named in Item C; and
- (aa) “**Vendor’s Agent**” means the person named in Item B.
- 1.2 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.
- 1.3 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-laws and ordinances made under the statute.
- 1.4 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.
- 1.5 Any defined terms used in any part of this Contract shall have the same meaning when used in any other part of this Contract.
- 1.6 The marginal notes in the Items Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Conditions.
- 1.7 This Contract shall be governed by the laws of Queensland.

2. HEADINGS AND NOTES

Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

3. DEPOSIT

- 3.1 The Deposit shall be paid by the Purchaser to the Stakeholder immediately upon the formation of this Contract.
- 3.2 If the Purchaser:
- (a) fails to pay the Deposit as provided in clause 3.1;
- (b) pays the Deposit by cheque which is postdated; or

- (c) pays the Deposit by cheque which is not honoured on presentation;
- then, the Purchaser shall be in substantial breach of this Contract and the Vendor 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.

3.3 The rights and powers conferred by clause 3.2 are in addition to any other rights the Vendor may have at law or in equity.

3.4 The Deposit shall be retained by the Stakeholder until completion or earlier termination of this Contract whereupon the Stakeholder shall pay the Deposit to the person entitled to it.

3.5 If this Contract is terminated pursuant to the provisions of clauses 7.6, 9.3(a), 19, 20.1, 21.1, 31.1, 31.5, 32.2 or 32.3(2), the Deposit and other moneys paid under this Contract shall be refunded to the Purchaser by the Vendor or the Stakeholder as the case may be but without interest, costs or damages and the same shall be accepted by the Purchaser in full and final satisfaction of all claims.

4. COMPLETION AND POSSESSION

The balance of the Purchase Price shall be paid on the Date for Completion 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 Purchaser 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 *Stamp Act 1894*, 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 Vendor 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 16.4;
- (g) all other instruments (which shall be duly stamped) in the possession or control of the Vendor 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 Vendor evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Standard Building Regulation 1993* 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 Vendor; and
- (k) all documents in the possession or control of the Vendor which the Purchaser would reasonably require to enable the Purchaser to manage the Property and to prepare returns under the ITAA.

NOTE 9

5. KEYS

5.1 Immediately on completion, the Vendor shall deliver all Keys, which are in the possession or under the control of the Vendor, in accordance with any notice given in writing by the Purchaser to the Vendor and failing such notice the Vendor shall deliver the Keys:

- (a) to the Purchaser, if the Purchaser is present personally at completion;

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

5.2 At or prior to completion, the Vendor 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

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

6.2 If this Contract is completed all interest accruing on the investment of the Deposit shall be shared equally between the Vendor and the Purchaser. 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.

6.3 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 Stakeholder shall not be liable for any loss suffered by the parties in consequence of an investment pursuant to clause 6.1.

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

6.5 The parties authorised the Stakeholder 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 Stakeholder against any taxation assessed in respect of such interest.

6.6 The Vendor and the Purchaser shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of the ITAA.

7. VENDOR'S STATEMENT

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

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

- (a) the Vendor has free and unqualified capacity and power to contract and to complete this Contract;
- (b) the Vendor is not under any legal disability which affects the Vendor's capacity to contract and to complete this Contract; and
- (c) if the Vendor is a trustee, the Vendor 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 completion of this Contract.

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

- (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 Vendor 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 Vendor 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 Vendor is a natural person, the Vendor is not a bankrupt nor has the Vendor signed any authority under section 188 of the *Bankruptcy Act 1966*;
 - (h) if the Vendor is a corporation within the meaning of the *Corporations Law* or any similar legislation applicable in the Vendor's place of incorporation:
 - (i) the Vendor is not in liquidation;
 - (ii) no action has been taken by or against the Vendor which could lead to the winding up of the Vendor;
 - (iii) the Vendor is not under official management;
 - (iv) an administrator, controller or managing controller has not been appointed to the Vendor or in respect of the whole or any part of the Property; and
 - (v) a compromise or arrangement has not been proposed between the Vendor and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
 - (i) the Vendor 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 Purchaser may terminate this Contract by notice in writing to the Vendor.
- 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 Purchaser by the Vendor or the Stakeholder as the case may be and the Vendor shall be liable by way of damages as compensation for the loss suffered by the Purchaser 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 Vendor warrants that, except as disclosed in this Contract or a notice given by the Vendor to the Purchaser under the *Environmental Protection Act 1994* ("EPA"), at the date of this Contract:
- (a) there is no outstanding obligation on the Vendor to give notice to the administering authority under EPA of a notifiable activity being conducted on the Land; and
 - (b) the Vendor 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 Vendor breaches a warranty in clause 7.6(1), the Purchaser may:
- (a) terminate this Contract by notice in writing to the Vendor given 14 days after the date of this Contract; or
 - (b) complete this Contract and claim compensation, but only if the Purchaser claims it in writing before completion of this Contract.
- 7.7 If requested by the Purchaser, the Vendor within 14 days of such request shall:
- (a) produce to the Purchaser all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and
 - (b) deliver to the Purchaser photocopies of such documents or dealings (if the dealings are in writing) certified by the Vendor or the Vendor's solicitor as being true copies.

8. ERRORS AND MISDESCRIPTIONS

- 8.1 If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Purchaser shall not

be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Purchaser shall not be entitled to delay completion or to withhold any part of the Purchase Price by reason of any such claim for compensation.

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

9. SURVEY AND INSPECTION

- 9.1 The Purchaser 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.
- 9.2 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Purchaser shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Purchaser shall not be entitled to delay completion or to withhold any part of the Purchase Price by reason of any such claim for compensation.
- 9.3 If there is any material error in the boundaries or area of the Land or any material encroachment, the Purchaser shall be entitled to elect by notice in writing to the Vendor given on or before the Date for Completion either:
- (a) to terminate this Contract; or
 - (b) to complete this Contract with compensation, in which event the Purchaser shall be entitled to such compensation as the case may require and shall not be entitled to delay completion or to withhold any part of the Purchase Price by reason of any such claim for compensation.

10. EXECUTION AND PRODUCTION OF DOCUMENTS

- 10.1 Subject to compliance by the Purchaser with the Purchaser's obligations under or by virtue of this Contract the Vendor shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Purchaser obtains a good and valid title to the Property but all transfer documents, any declaration required pursuant to clause 4(c), and all instruments or declarations required pursuant to clause 4(d) shall be prepared by and at the expense of the Purchaser and delivered to the Vendor within a reasonable time prior to the Date for Completion.
- 10.2 If so requested by the Purchaser, the Vendor shall deliver to the Purchaser, prior to the Date for Completion, photocopies of the documents executed by the Vendor.
- 10.3 After execution of the transfer, if so requested by the Purchaser and upon payment of the usual production fee by the Purchaser, the Vendor shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4(c) and thereupon the Vendor shall be deemed to have complied with the Vendor's obligations under clause 4(c).
- 10.4 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 Vendor shall not be obliged to deliver it to the Purchaser but shall enter into such reasonable covenants with the Purchaser as the Purchaser may require for production of the instrument of title.
- 10.5 If the instrument of title is partially cancelled the Vendor shall not be obliged to produce a separate instrument of title on completion.

10.6 Where either clause 10.4 or 10.5 apply, the Purchaser shall bear the cost of any new instrument of title relating to the Land.

11. INTEREST ON LATE PAYMENTS

11.1 Without derogating from the strict effect of clauses 3, 13 and 26 if any money (including the Deposit) payable under or by virtue of this Contract is not paid when payable such money shall bear interest from the due date for payment to the date of payment, both inclusive, at the rate stated in Item P and if no other rate is so stated at the Contract Rate (at the date the money became payable) per annum simple interest which interest shall be paid contemporaneously with the balance of the Purchase Price.

11.2 Any judgment for any such money shall likewise bear interest from the date of judgment to the date of payment, both inclusive.

12. DIVIDING FENCES

12.1 Despite anything in the *Dividing Fences Act 1953* to the contrary, the Vendor shall not be bound to contribute to the construction of any dividing fence between the Land and any adjoining land owned by the Vendor.

12.2 The Vendor states that at the date of this Contract there are no outstanding notices, orders or agreements with respect to the construction or repair of a dividing fence between the Land and any adjoining land under the *Dividing Fences Act 1953* or otherwise.

12.3 Any notice, order or agreement with respect to the construction or repair of a dividing fence between the Land and any adjoining land received given or made after the date of this Contract shall be fully complied with by the Purchaser.

12.4 Immediately upon receipt of a notice or order or the making of an agreement in accordance with clause 12.3, the Vendor shall give to the Purchaser a copy of the notice, order or agreement.

12.5 After the date of this Contract, the Vendor shall not without the prior written consent of the Purchaser give, seek or make any notice, order or agreement with respect to the construction or repair of any dividing fence between the Land and any adjoining land under the *Dividing Fences Act 1953* or otherwise.

13. PURCHASER'S DEFAULT

13.1 If the Purchaser:

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

13.2 If the Vendor affirms this Contract pursuant to clause 3.2 or clause 13.1, the Vendor may:

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

13.3 If the Vendor terminates this Contract pursuant to clause 3.2 or clause 13.1, the Vendor may elect to:

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

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

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

14. PARTICULARS OF ADJUSTABLE ITEMS

14.1 Within a reasonable time after written request by the Purchaser prior to the Date for Completion, the Vendor shall deliver to the Purchaser:

- (a) a written statement of all rates, taxes, outgoing, 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.

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

14.3 The Vendor warrants that every such statement shall be true at the Date for Completion.

15. ADJUSTMENTS

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

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

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

- (a) in the case of those paid by the Vendor, 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.

15.4 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 Purchaser, at the expense of the Purchaser, 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 Vendor 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 (“**the likely assessment**”);
 - (d) the likely assessment shall then be apportioned.
- 15.5** Land tax shall be apportioned on the basis that, as at midnight on the previous 30th June, the Vendor owned no land other than the Vendor's interest in the Land and was a natural person resident in Queensland.
- 15.6** If at the date of possession there is not a separate unimproved value of the Land in effect under the *Valuation of Land Act 1944*, then land tax shall be apportioned on a deemed unimproved value which shall equal $(A \times B) \div C$, where *A* is the unimproved value in effect under the *Valuation of Land Act 1944* for the parcel of which the Land forms part, *B* is the area of the Land and *C* is the area of that parcel.
- 15.7** Without derogating from the provisions of clause 15.1, if the Vendor is unable to obtain a certificate stating that the Land is not liable for land tax for the year current at the date of possession or any year or years up to and including 30th June immediately preceding the date of possession and the Commissioner of Land Tax specifies, in writing, to the Purchaser or the Purchaser's solicitor that (or anything to the effect that) it would be prudent to hold an amount of money until a certificate of clearance issues for those years, then, on or before the date of possession, the Vendor shall pay the amount (“**retention amount**”) to a solicitor to be held as security for the payment of land tax for those years and shall procure and deliver to the Purchaser, on the date of possession, a written undertaking, addressed to the Purchaser by that solicitor, in or to the effect of the following form:
1. I/We acknowledge that the amount of \$..... (retention amount) has been paid to me/us under clause 15.7 of a Contract dated the day of 20.... between as Vendor and you as the Purchaser for the sale of property situate at
 2. On instructions from the Vendor, I/we undertake to hold the retention amount, as solicitor/s for the Vendor, in my/our trust account either:
 - (a) to pay land tax up to and including the year 20.... under clause 15 of the Contract; or
 - (b) until such land tax has otherwise been paid by or on behalf of the Vendor.
 3. Except where I/we have made a payment pursuant to paragraph 2(a), I/we undertake to notify the Commissioner of Land Tax, immediately, that the retention amount has been paid to me/us for the purposes mentioned above.
 4. If the Commissioner of Land Tax requires me/us to pay the retention amount or any part of it to him I/we undertake to make the payment immediately.
 5. If:
 - (a) I/we do not pay land tax under paragraph 2(a);
 - (b) I/we are not required to make the payment referred to in paragraph 4;
 - (c) the Vendor does not otherwise pay or cause land tax to be paid up to and including the year referred to; and
 - (d) the land tax or some part of it is paid by you under some lawful requirement;
 I/we undertake to indemnify you out of the retention amount (up to but not exceeding the amount held by me/us for the time being upon this undertaking) for any

- land tax so paid by you (less any sum which you are liable to pay under clause 15.2).
- 15.8** The Vendor instructs any solicitor acting for the Vendor in the conveyance to give the undertaking referred to in clause 15.7 and agrees that the Vendor shall be bound, personally, by the terms of the undertaking and will not require the payment to the Vendor of the retention amount or any part of it until land tax has been paid up to and including the year referred to.

16. RENTS AND PROFITS GUARANTEES AND BONDS

- 16.1** The rents and profits with respect to the Property shall benefit the Vendor up to and including the date of possession and thereafter shall benefit the Purchaser 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 completion but shall be recoverable by the Vendor 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 completion;
 - (c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Date for Completion shall be apportioned when received by either party.
- 16.2** If on completion a deduction is made in respect of any Bond, the Purchaser shall following completion keep the Vendor indemnified in that respect.
- 16.3** The Vendor assigns to the Purchaser, subject to the completion of this Contract and with effect from the Date for Completion, 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 Vendor or any predecessors in title of the Vendor together with the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of the Service Contractor) and the benefit of all Guarantees or Bonds capable of assignment held by the Vendor in respect of the Leases provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned upon completion shall not be assigned to the Purchaser but be recoverable by the Vendor and to that extent section 117 of the *Property Law Act 1974* shall not apply. The Purchaser 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 Vendor to recover any unpaid rents and profits.
- 16.4** The Vendor shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.

17. LIABILITY OF PURCHASER

- 17.1** The Property shall be at the risk of the Vendor until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Purchaser. The Vendor whilst continuing in possession will use the Property with reasonable care.
- 17.2** From the date of this Contract until completion, the Vendor shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Vendor. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Vendor shall immediately notify the Purchaser in writing.
- 17.3** In addition to the obligations contained in clause 17.2, the Vendor shall not without the prior written consent of the Purchaser 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 completion;

- (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 Vendor shall permit the Purchaser or any person authorised by the Purchaser to enter the Property on the Date for Completion 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 Vendor shall permit any person authorised by the Purchaser 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 Date for Completion 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 Vendor or some other person a notice in writing pursuant to sections 21 and 22 of the *Building Act 1975* in respect of any building or structure on the Land and the notice is current at the Date for Completion the Purchaser may by notice in writing to the Vendor given on the Date for Completion terminate this Contract.

20.2 Except for any notice referred to in clause 20.1, 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 Vendor in a proper and workmanlike manner on or before the Date for Completion; or
- (b) if issued on or after the date of this Contract shall be fully complied with by the Purchaser who shall indemnify the Vendor in respect of the compliance with the notice or order.

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

21. PROPERTY ADVERSELY AFFECTED

21.1 If it is established that at the date of this Contract:

- NOTE 2**
- (a) the use of the Property as described in Item H was not lawful under any town planning scheme;
 - (b) the access to the Land is other than by way of an adjoining road dedicated for public use as a road or by way of a registered easement to a road dedicated for public use;
 - (c) the Land was affected by a proposal of any competent authority for the re-alignment, widening, resiting or altering of the then level or direction of any road or railway abutting the Land;
 - (d) any electricity, telephone, water supply, sewerage or drainage service to the Land which passes through other

- land is not protected by a registered easement or by statutory authority;
- (e) there is current in respect of the whole or part of the Land, a notice to treat or notice of intention to resume issued by a competent authority;
- (f) the Property is dedicated as a protected area of any class mentioned in section 14 of the *Nature Conservation Act 1992* or is affected by a conservation agreement or conservation plan pursuant to that Act;
- (g) there exists any claim for an interest in the Property by any Australian Aboriginal people pursuant to the *Aboriginal Land Act 1991*, the *Native Title Act 1993 (Cth)* or the *Native Title (Queensland) Act 1993*; or
- (h) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List; and any such facts are not disclosed in this Contract the Purchaser may by notice in writing to the Vendor given on or before the Date for Completion terminate this Contract.

21.2 The Vendor authorises the Purchaser or the Purchaser's solicitor to inspect all records relating to the Property held by the Local Government or other body maintaining any such records and will if requested by the Purchaser sign an appropriate authority to the Local Government or other body for the purposes of this clause 21.

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 Vendor to the Purchaser shall be paid by the Purchaser and if not paid by the Purchaser may be paid by the Vendor and recovered from the Purchaser as a liquidated debt.

24. MERGER

Despite completion and despite the registration of the transfer in favour of the Purchaser, any general or special condition (or any part or parts thereof) to which effect is not given by completion or registration and which is capable of taking effect after completion or registration shall remain in full force and effect.

25. TIME AND PLACE FOR COMPLETION

25.1 Completion shall be effected at such time and place as may be agreed upon by the parties. The time for completion shall be between the hours of 9:00am and 5:00pm on the Date for Completion. Despite any agreement by the parties as to a specific time for completion the provisions of clause 26 do not apply in respect of that time. In the absence of agreement as to place, completion shall be effected at:

- (a) the office of the solicitor for the Vendor in the city or town named in Item R; or
- (b) if the Vendor has no solicitor in that city or town the office of the solicitor for the Purchaser in the city or town named in Item R; or
- (c) in any case not provided for in clause 25.1(a) or clause 25.1(b) the appropriate office provided for by section 61(2)(c) of the *Property Law Act 1974*.

25.2 Despite clause 25.1 if a mortgage is to be discharged on completion the Vendor may by notice in writing to the Purchaser given not less than 2 Business Days prior to the Date for Completion require completion to take place at the office of the Vendor'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.

- 25.3 If the Date for Completion falls on a Saturday, a Sunday or a public holiday in the place for completion then unless Item Q expressly designates such date a Saturday or Sunday or by the name of the public holiday, completion shall be effected:
- (a) on such other day as may be agreed by the parties; or
 - (b) in default of agreement then on the Business Day next following the Date for Completion.

26. TIME OF THE ESSENCE

Except as otherwise provided in this Contract, time shall be deemed to be of the essence of the Contract.

27. NOTICES, COMMUNICATIONS, AUTHORITY, DIRECTIONS, ETC.

- 27.1 Any document and any notice in writing or other written communication required or desired to be given by one party to the other under or pursuant to this Contract or concerning this Contract may be:
- (a) given by the solicitor for the party intending to give it;
 - (b) given to the other party's solicitor;
- any such notice, if to the Vendor pursuant to clause 31 may be given to the Vendor's Agent as if the Vendor's Agent was a party and in the manner provided in this clause 27 for the giving of written notice by one party to the other party.
- 27.2 Any such notice or other communication may be signed by the solicitor for the party on whose behalf it is to be given.
- 27.3 Any such document, notice or other communication shall be deemed to have been given by one party to the other if:
- (a) delivered to the other party or the other party's solicitor personally;
 - (b) left for the other party at that party's address for notices;
 - (c) posted to the other party by pre-paid mail in an envelope addressed to that party at that party's address for notices;
 - (d) left for the other party's solicitor at the usual or last known place of business of that solicitor;
 - (e) posted to the other party's solicitor by prepaid mail in an envelope addressed to that solicitor at the usual or last known place of business of that solicitor.
- 27.4 For the purposes of this clause 27, a party's address for notices shall in the case of the Vendor be the address specified in Item C and in the case of the Purchaser shall be the address specified in Item E.
- 27.5 Any such document, notice or other communication so sent by post shall be deemed to have been given at the time when by the ordinary course of post it would have been delivered.
- 27.6 Any copy of a document, notice in writing or other communication required or desired to be given by one party to the other party under or pursuant to this Contract or concerning this Contract may be given by transmitting a facsimile copy thereof via the telephone network to the address for notices of the other party or to the usual or last known place of business of that party's solicitor and shall be deemed to have been given (unless the contrary is shown) upon the date and at the time contained in any transmission confirmation report which contains the identification code of the person to whom it was intended to be transmitted and which indicates that the transmission was received without error.
- 27.7 If a document or a copy of a document or a notice in writing or other written communication is given after 5.00pm on any Business Day and before 9:00am on the next following Business Day by one party or one party's solicitor to the other party or the other party's solicitor and its receipt is not acknowledged by the other party or the other party's solicitor during that period, it shall be deemed to have been given at 9:00am on that next following Business Day.
- 27.8 As between the parties, a document or a copy of a document and a notice in writing or other written communication given by one party's solicitor to the other party or to the other party's solicitor shall be deemed to be given with the authority of the party whose solicitor gives it and, without limiting the generality of the foregoing, any such notice or other written

communication of an agreement to vary the Date for Completion or the approval date stated in Item T shall be deemed to be given with the authority of the party whose solicitor gives it.

- 27.9 Any money payable by the Purchaser or the Stakeholder to the Vendor shall be paid to the Vendor or as the Vendor's solicitor shall direct in writing.

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 Vendor shall at the Vendor'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 Vendor fails to do so the Purchaser may do so and recover the costs of so doing from the Vendor as a liquidated debt.
- 28.3 Any of that property not so removed shall be deemed abandoned by the Vendor and the Purchaser may without prejudice to any other remedy complete this Contract and appropriate or remove or otherwise dispose of that property as the Purchaser thinks fit.
- 28.4 Any costs incurred by the Purchaser in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Purchaser from the Vendor and the Vendor shall indemnify and hold indemnified the Purchaser from and against all claims, demands, actions, costs, judgments and expenses which the Purchaser may suffer or incur by reason of any other person claiming any interest in that property.

29. CHATTELS

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

30. APPOINTMENT OF AGENT

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

31. FINANCE CLAUSE

- NOTE 7** 31.1 If Items S, T and U are not deleted, this Contract is subject to the Purchaser obtaining from the lender or class of lender specified in Item S on or before the approval date specified in Item T approval of a loan not being less than the amount of loan specified in Item U on terms and conditions satisfactory to the Purchaser and if the Purchaser does not obtain such approval for any reason not being attributable to the Purchaser's own default, the Purchaser may terminate this Contract by notice in writing given to the Vendor.
- 31.2 The Purchaser shall take all steps reasonably necessary to obtain such approval, and the onus of establishing this shall be upon the Purchaser.
- 31.3 The Purchaser may waive the benefit of the condition contained in clause 31.1 by giving notice in writing to the Vendor within 2 Business Days from the approval date.
- 31.4 If the Purchaser obtains such approval the Purchaser shall give notice in writing of such approval to the Vendor promptly and in any event within 2 Business Days from the approval date.
- 31.5 If the Purchaser:

- (a) neither terminates this Contract pursuant to clause 31.1 nor waives pursuant to clause 31.3 the benefit of the condition contained in clause 31.1; and
 - (b) does not give notice pursuant to clause 31.4 that the Purchaser has obtained such approval;
- within 2 Business Days from the approval date then, instead of any other remedy available to the Vendor by reason of the failure of the Purchaser to fulfil the Purchaser's obligations under this clause 31 and despite any continuing right which the Purchaser may have to terminate this Contract under clause 31.1, the Vendor may at the Vendor's option, by notice in writing to the Purchaser (which notice shall specify that it is given pursuant to this clause 31.5) terminate this Contract.

32. PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS

32.1 Vendor's Statement

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

- (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 Vendor is aware that would render any Lease liable to forfeiture nor has the Vendor agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Purchaser prior to execution of this Contract;
- (d) the Vendor is not aware of any breach by the Vendor of any Lease or Service Contract;
- (e) where any of the Leases are "existing retail shop leases" or "retail shop leases" within the meaning of section 5 of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Vendor apply:
 - (i) as far as the Vendor is aware the Vendor 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, Retail Shop Leases Tribunal proceedings or Orders in existence in respect of any Lease;
 - (iv) no tenant has notified the Vendor requesting the right to renew any Leases for a further period;
 - (v) no tenant has made a claim upon the Vendor to pay compensation for loss or damage suffered by the tenant by virtue of section 43 of the Act nor are there any circumstances existing to the Vendor'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 Purchaser may terminate this Contract by notice in writing to the Vendor.

32.3 Acceptance of Lease and Service Contract Terms

- (1) Within 7 days of the date of this Contract, the Vendor will deliver to the Purchaser or the Purchaser'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.
- (2) If:
 - (a) the Vendor does not deliver to the Purchaser or the Purchaser's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(1); or
 - (b) true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(1) and the Purchaser is not satisfied with any of the terms and conditions of any Lease or Service Contract,

then in the case of clause 32.3(2)(a) the Purchaser shall be entitled to terminate this Contract by notice in writing to the Vendor or in the case of clause 32.3(2)(b) the Purchaser shall be entitled to terminate this Contract by written notice to the Vendor within 7 days from the date upon which all Leases and Service Contracts have been delivered.

- (3) If the Purchaser does not give written notice to the Vendor pursuant to clause 32.3(2)(a) or clause 32.3(2)(b), the Purchaser agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Vendor in the Lease Schedule and Service Contract Schedule from the Date for Completion as if the Purchaser were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Vendor.
- (4) With respect to Service Contracts, clause 32.3(3) will apply subject to the consent of the Service Contractor.
- (5) 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 INTERESTS

NOTE 10 The Purchaser warrants that:

- (a) the Purchaser is not a "foreign person" within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* as the meaning of that expression is extended by the operation of section 4(6) of that Act; and
- (b) the Purchaser is not a "person to whom this section applies" within the meaning of that expression in section 26A of the *Foreign Acquisitions and Takeovers Act 1975* as that section is affected by section 5A of that Act.

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 Items Schedule and Notes

The Items 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

If this clause 34.4 applies, the Purchase Price includes the Vendor's liability for GST on the Supply of the Property. The Purchaser is not obliged to pay any additional amount to the Vendor 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 Vendor's liability for GST on the Supply of the Property. The Purchaser must on the Date for Completion pay to the Vendor in addition to the Purchase Price an amount equivalent to the amount payable by the Vendor as GST on the Supply of the Property.

34.6 Margin Scheme

Warning: The Vendor 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 Vendor's liability for GST on the Supply of the Property. The Purchaser is not obliged to pay any additional amount to the Vendor on account of GST on the Supply of the Property;
- (b) the Vendor:
 - (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 Vendor breaches clause 34.6(b)(i) or its warranty under clause 34.6(b)(ii) then:
 - (i) the Purchaser may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;
 - (ii) if the Purchaser does not terminate this Contract under clause 34.6(c)(i) or does not become aware of the breach until after the Date for Completion, it must pay to the Vendor an amount equal to the Input Tax Credit which the Purchaser will receive for GST payable for the Supply of the Property. Payment must be made when the Purchaser receives the benefit of the Input Tax Credit;
 - (iii) the Purchaser is entitled to compensation from the Vendor 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 Vendor warrants that:
 - (i) between the date of this Contract and the Date for Completion the Vendor will carry on the Enterprise; and
 - (ii) the Property (together with any other things that must be provided by the Vendor to the Purchaser at the Date for Completion under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;
- (d) the Purchaser warrants that at the Date for Completion 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 Purchaser may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;
 - (ii) if the Purchaser does not terminate this Contract then, at the Date for Completion, the Purchaser

- must pay to the Vendor the amount payable by the Vendor as GST on the Supply of the Property;
- (iii) if the Purchaser does not become aware of the breach until after the Date for Completion, it must pay to the Vendor an amount equal to the Input Tax Credit which the Purchaser will receive for GST payable in respect of the Supply of the Property. Payment must be made when the Purchaser receives the benefit of the Input Tax Credit;
- (iv) the Purchaser is entitled to compensation from the Vendor if there is a breach of the warranty;
- (f) if the warranty in clause 34.7(d) is not correct the Purchaser must pay to the Vendor an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Date for Completion or, if completion has occurred, immediately on demand;
- (g) if for any reason other than a breach of a warranty by the Vendor or the Purchaser this transaction is not a Supply of a Going Concern, the Purchaser must pay to the Vendor the amount payable by the Vendor as GST on the Supply of the Property. Payment must be made at the Date for Completion or, if completion 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 Vendor must give to the Purchaser a Tax Invoice at the Date for Completion.

34.10 No Merger

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

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.

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 Vendor 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 Purchaser 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 Purchaser's attention and, if the Purchaser 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 Date for Completion.

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 Stakeholder should sign with his or her personal signature.

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

If the Stakeholder is a company, the acknowledgement should be sealed by use of the common seal in accordance with the company's articles of association. It would be sufficient in the latter case if it is signed by a director or other person who holds general authorisation to execute acknowledgements of the Stakeholder on behalf of the company.

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

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.

This form was adopted by The Real Estate Institute of Queensland Limited April 2001

This form was approved by the Queensland Law Society Incorporated April 2001

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