

Contract for Commercial Lots in a Community Titles Scheme

Seventh 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 Lots in a Community Titles Scheme in Queensland.

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

REFERENCE SCHEDULE

Contract Date: _____

AGENT

NAME:

Knight Frank Australia Pty Ltd

LICENCE NO: 3129496

ABN/ACN: 1004973684

ADDRESS: Level 3, 12 Creek Street

SUBURB: BRISBANE

STATE: QLD POSTCODE: 4000

PHONE:

07 3246 8888

MOBILE:

FAX:

07 3229 5436

EMAIL:

Ben.Hatch@au.knightframk.com

PARTIES

SELLER

NAME:

WELCH INVESTMENTS PTY LTD ACN 010 121 070 TRUSTEE UNDER INSTRUMENT 711046049

ADDRESS: C/- Adrians Accountants (Attn: Kimberley Middlemis)

60 Baxter Street

SUBURB: FORTITUDE VALLEY

STATE: QLD POSTCODE: 4006

PHONE:

07 3832 7544

MOBILE:

FAX:

EMAIL:

kmiddlemis@adriansca.com.au

ABN:

30221445384

NAME:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

MOBILE:

FAX:

EMAIL:

ABN:

SELLER'S SOLICITOR

← or any other Solicitor notified to the Buyer

NAME:

WOODS PRINCE LAWYERS

REF:

20220490

CONTACT:

Heather Beckingsale

ADDRESS: GPO Box 1330

SUBURB: BRISBANE

STATE: QLD POSTCODE: 4001

PHONE:

07 3229 8740

MOBILE:

FAX:

07 3229 8750

EMAIL:

heather@woodsprincelawyers.com

BUYER

NAME:

BRISMATE PTY LTD ACN 656 286 985 AS TRUSTEE FOR TEAM BRIS SUPER

ADDRESS: 1454 Logan Road

SUBURB: MOUNT GRAVATT

STATE: QLD

POSTCODE: 4122

PHONE:

MOBILE:

FAX:

EMAIL:

ABN:

0499 669 002

matt@mdeprop.com

NAME:

ADDRESS:

SUBURB:

STATE:

POSTCODE:

PHONE:

MOBILE:

FAX:

EMAIL:

ABN:

BUYER'S SOLICITOR

← or any other Solicitor notified to the Seller

NAME:

MSJA LAWYERS

REF:

CONTACT:

ADDRESS: Level 3, 371 Queen Street

SUBURB: BRISBANE

STATE: QLD

POSTCODE: 4000

PHONE:

MOBILE:

FAX:

EMAIL:

07 3707 1400

07 3707 1401

PROPERTY

Lot Address: Unit 10 / 16 Metroplex Avenue

Suburb: MURRARIE

STATE: QLD

POSTCODE: 4172

Description: Lot: 10 on: ☐ BUP ☐ GTP ☒ SP 182769

Scheme: Portal North Community Titles Schem Community Titles Scheme: 34530 & 26167

Title Reference: 50578809

Local Government: Brisbane

Present Use: Commercial office

Excluded Fixtures:

Included Chattels: Unless excluded above 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 telephone or satellite antennae or dishes, in-ground shrubs and all fixtures as inspected by the Buyer.

PRICE

Purchase Price: \$ 1,040,000.00

Deposit: \$ 40,000.00 Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below:

\$ 60,000.00 Balance Deposit (if any) payable on:
On approval of finance in accordance with Standard Condition 3

Deposit Holder: Knight Frank Australia Pty Ltd Trust Account

Deposit Holder's Trust Account BANK: ANZ
BSB: 014 002
ACCOUNT NO: 8377 56993

Default Interest Rate: % ← If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc. will apply.

FINANCE

Finance Amount: \$ Sufficient to complete ← Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier: Buyers Choice Finance Date: 60 days from the Contract Date

BUILDING AND/OR PEST INSPECTION DATE

Inspection Date: ← If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4 does not apply.

MATTERS AFFECTING PROPERTY

Title Encumbrances:

Is the Property sold subject to any Encumbrances? ☐ No ☒ Yes, listed below:

All statutory easements for sewerage and drainage

← **WARNING TO SELLER:**
You are required to disclose all Title 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. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

ADDITIONAL BODY CORPORATE INFORMATION

Interest Schedule Lot Entitlement of Lot: 520

Aggregate Interest Schedule Lot Entitlement: 9476

Contribution Schedule Lot Entitlement of Lot: 530

Aggregate Contribution Schedule Lot Entitlement: 10196

INSURANCE POLICIES

Insurer: CHU Underwriting Agencies Policy No: QCS61124-1

Building: \$17,131,058

Public Liability: \$30,000,000

Other: Common Contents - \$171,311, Voluntary Workers - \$200,000/\$2,000, Office Bearers - \$5,000,000
Fidelity Guarantee - \$250,000, Loss of Rent - \$2,569,658, Building Catastrophe - \$2,569,658
B/Catast Esc Accom - \$128,482, B/Catast Store/Evac - \$128,482

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 Lot: (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 or
- ☐ 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 section 83 *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* by giving a copy of an order or application to the Buyer (where applicable) prior to the Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

GST TABLE

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 the 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 GST 1 is marked:
- items GST2 and GST3 must not be marked;
 - despite any markings of items GST2 and GST3, clauses 11.4, 11.5 and 11.6 do not apply.
- C. If the Yes box in item GST2 is marked:
- item GST1 and GST3 must not be marked;
 - despite any marking of items GST1 and GST3, clauses 11.4, 11.5 and 11.7 do not apply.

GST1 GOING CONCERN

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.

Is this a sale of a Going Concern?

Yes ☒

If Yes, clause 11.7 (If the Supply is a Going Concern) applies.

Otherwise clause 11.7 (If the Supply is a Going Concern) does not apply.

If the Yes box is marked, do not complete items GST2 and GST3.

GST2 MARGIN SCHEME

Is the Margin Scheme to apply to the sale of the Property?

Yes ☐

If Yes, clause 11.6 (Margin Scheme) applies.

Otherwise clause 11.6 (Margin Scheme) does not apply.

The Seller must not apply the Margin Scheme to the Supply of the Property if clause 11.6 does not apply.

If the Yes box is marked, do not complete items GST1 and GST3.

GST3 INCLUSIVE OR EXCLUSIVE PURCHASE PRICE

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

Does the Purchase Price include GST?

Mark 1 box only

Yes ☐

If Yes, clause 11.4 (Purchase Price Includes GST) applies.

No ☐

If No, clause 11.5 (Purchase Price Does Not Include GST) applies.

If neither box is marked or both boxes are marked, clause 11.4 (Purchase Price Includes GST) applies.

GST WITHHOLDING OBLIGATIONS

Buyer Warranty

Is the Buyer registered for GST and acquiring the Lot for a creditable purpose?

(select whichever is applicable)

☐ 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.]

← **WARNING:** the Buyer warrants in clause 2.4 (6) that this information is true and correct.

COMMERCIAL TENANCY SCHEDULE*

*Attach further Schedule if insufficient space.

LEASE 1

Name of Tenant: _____

Use: _____ Location/Tenancy No: _____

Area of Tenancy (m²approx): _____ Current Rent per Annum: \$ _____
☐ inclusive of outgoings ☐ exclusive of outgoings

Current Commencement Date: _____ Current Term: _____

Remaining Option/s: 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: _____

Use: _____ Location/Tenancy No: _____

Area of Tenancy (m²approx): _____ Current Rent per Annum: \$ _____
☐ inclusive of outgoings ☐ exclusive of outgoings

Current Commencement Date: _____ Current Term: _____

Remaining Option/s: Option 1 Term: _____ years:
Option 2 Term: _____ years:
Option 3 Term: _____ years:

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

SERVICE AGREEMENT SCHEDULE*

* Attach further Schedule if insufficient space.

CONTRACT 1

Contractor: _____ To be advised

Service performed: _____ Air-conditioning servicing

Cost: \$ To be advised per ☐ annum ☐ quarter ☒ month

CONTRACT 2

Contractor: _____

Service performed: _____

Cost: \$ _____ per ☐ annum ☐ quarter ☐ month

CONTRACT 3

Contractor: _____

Service performed: _____

Cost: \$ _____ per ☐ annum ☐ quarter ☐ month

SELLER'S DISCLOSURE

WARNING: The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.

[Section 223(4) Body Corporate and Community Management Act 1997]

The Seller gives notice to the Buyer of the following matters:

(a) LATENT OR PATENT DEFECTS IN COMMON PROPERTY OR BODY CORPORATE ASSETS

Nil

[Sections 223(2)(a) and 223(2)(b) Body Corporate and Community Management Act 1997] Annex details of disclosure made by the Seller (if any).

(b) ACTUAL CONTINGENT OR EXPECTED LIABILITIES OF BODY CORPORATE

Nil

[Sections 223(2)(c) and 223(2)(d) Body Corporate and Community Management Act 1997]. Annex details of disclosure made by the Seller (if any).

(c) CIRCUMSTANCES IN RELATION TO AFFAIRS OF THE BODY CORPORATE

Nil

[Sections 223(3) Body Corporate and Community Management Act 1997]. Annex details of disclosure made by the Seller (if any).

(d) EXCEPTIONS TO STATEMENTS IN CLAUSE 7.4(2)

Nil

Annex details of disclosure made by the Seller (if any).

(e) PROPOSED BODY CORPORATE RESOLUTIONS (CLAUSE 8.4)

Nil

Annex details of disclosure made by the Seller (if any).

SPECIAL CONDITIONS

The Seller discloses to the Buyer that there is a minor leak in the roof of the Property which has caused minor ceiling damage which has been reported to the Body Corporate and is currently under repair.

Page 7 of 20

TERMS OF CONTRACT

For Commercial Lots in a Community Titles Scheme

1. DEFINITIONS

1.1 In this Contract:

- (1) terms in **bold** in the Reference Schedule and the Disclosure Statement have the meanings shown opposite them unless the context requires otherwise; and
 - (a) **"ATO"** means the Australian Taxation Office;
 - (b) **"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;
 - (c) **"Balance Purchase Price"** means the Purchase Price, less the Deposit paid by the Buyer, adjusted under clause 2.5;
 - (d) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
 - (e) **"Body Corporate"** means the body corporate of the Scheme;
 - (f) **"Body Corporate Debt"** has the meaning in the Regulation Module but excludes the Body Corporate Levies for the period which includes the Settlement Date;
 - (g) **"Body Corporate Levies"** means regular periodic contributions levied on the owner of the Lot (including, if applicable, levied under an exclusive use by-law) excluding any Special Contribution;
 - (h) **"Bond"** includes any security for payment of Rent or other monies or performance of any obligation pursuant to any Lease;
 - (i) **"Building"** means any building that forms part of the Lot or in which the Lot is situated;
 - (j) **"Business Day"** means a day other than:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday in the Place for Settlement; and
 - (iii) a day in the period 27 to 31 December (inclusive);
 - (k) **"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.
 - (l) **"Commercial Tenancies"** means the tenancies referred to in the Commercial Tenancies Schedule and any additional tenancies granted by the Seller with the Buyer's consent under clause 10.6(1)(a);
 - (m) **"Commercial Tenancy Documents"** means all agreements, deeds of covenant and other documents relating to the Commercial Tenancies;
 - (n) **"Contractor Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule.
 - (o) **"Contractor"** means any party performing services under a Service Agreement;
 - (p) **"Court"** includes any tribunal established under statute;
 - (q) **"Disclosure Statement"** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997*;
 - (r) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
 - (s) **"Encumbrances"** includes:
 - (i) unregistered encumbrances
 - (ii) statutory encumbrances; and
 - (iii) Security Interests.
 - (t) **"Essential Term"** includes, in the case of breach by:
 - (i) the Buyer: clauses 2.1, 2.4(1), 2.4(5), 5.1 and 6.1; and
 - (ii) the Seller: clauses 2.4(5), 5.1, 5.3(1)(a) - (d), 5.3(1)(e)(ii) & (iii), 5.7 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential;
 - (u) **"Exclusive Use Areas"** means parts of the common property for the Scheme allocated to the Lot under an exclusive use by-law;
 - (v) **"Financial Institution"** means a Bank, building society or credit union;
 - (w) **"GST"** means the goods and services tax under the GST Act;
 - (x) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes other GST related legislation;
 - (y) **"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;
 - (z) **"Improvements"** means fixed structures in the Lot (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
 - (aa) **"ITAA"** means the *Income Tax Assessment Act 1936* (Cth) ("**1936 Act**") and the *Income Tax Assessment Act 1997* (Cth) ("**1997 Act**"), or if a specific provision is referred to, the Act which contains the provision; however if a specific provision of the 1936 Act is referred to which has been replaced by a provision of the 1997 Act, the reference must be taken to be to the replacement provision;
 - (bb) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;
 - (cc) **"Land"** means the scheme land for the Scheme;
 - (dd) **"Outgoings"** means:
 - (i) rates or charges on the Lot by any competent authority (for example, council rates, water rates, fire service levies);
 - (ii) land tax; and
 - (iii) Body Corporate Levies;
 - (ee) **"PPSR"** means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth);
 - (ff) **"Property"** means:
 - (i) the Lot;
 - (ii) the right to any Exclusive Use Areas;
 - (iii) the Improvements;
 - (iv) the Included Chattels;

- (gg) "**Regulation Module**" means the regulation module for the Scheme;
- (hh) "**Rent**" means any periodic amount, including outgoings, payable under the Tenancies;
- (ii) "**Reserved Items**" means the Excluded Fixtures and all chattels in the Lot and Exclusive Use Areas other than the Included Chattels;
- (jj) "**Scheme**" means the community titles scheme containing the Lot;
- (kk) "**Security Interests**" means all security interests registered on the PPSR over Included Chattels and Improvements;
- (ll) "**Service Agreement**" means any agreement between the Seller and another party in connection with services performed for the benefit of the Property and set out in the Service Agreement Schedule;
- (mm) "**Service Agreement Documents**" means the Service Agreements and all other documents relating to the Service Agreements;
- (nn) "**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*;
- (oo) "**Special Contribution**" means an amount: levied by the Body Corporate under the Regulation Module for a liability for which no provision or inadequate provision has been made in the budget of the Body Corporate;
- (pp) "**Tenant**" means a Tenant under the Commercial Tenancies;
- (qq) "**Transfer Documents**" means:
 - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and
 - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (rr) "**Transport Infrastructure**" has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (ss) "**Withholding Law**" means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

1.2 Words and phrases defined in the *Body Corporate and Community Management Act 1997* have the same meaning in this contract unless the context indicates otherwise.

2. PURCHASE PRICE

2.1 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
 - (a) does not pay the Deposit when required;
 - (b) pays the Deposit by post-dated cheque; or
 - (c) pays the Deposit by cheque which is dishonored on presentation.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

2.2 Investment of Deposit

- (1) If:
 - (a) the Deposit Holder is instructed by either the Seller or the Buyer; and
 - (b) it is lawful to do so;
 the Deposit Holder must:
 - (c) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
 - (d) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).
- (2) If there is income from the investment of the Deposit in respect of any financial year to which no beneficiary is presently entitled for the purpose of Division 6 of Part III of ITAA as at 30 June of that financial year:
 - (a) the parties must pay to the Deposit Holder the tax assessed to it in respect of that income (other than tax in the nature of a penalty for late lodgement ("**Penalty**") which the Deposit Holder must bear itself) and all expenses of the Deposit Holder in connection with the preparation and lodgement of the tax return, payment of the tax, and furnishing to the parties the information and copy documents they reasonably require;
 - (b) if the tax (other than Penalty) and the Deposit Holder's expenses are not paid to the Deposit Holder on demand, it may deduct them from the Deposit and income;
 - (c) if tax is not assessed on the income when the Deposit and income are due to be paid to the party entitled, the Deposit Holder may deduct and retain its estimate of the assessment; and
 - (d) as between the parties, the tax must be paid by the party receiving the income on which the tax is assessed, and the Deposit Holder's expenses.

2.3 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
 - (a) if this contract settles, the Seller;
 - (b) if this contract is terminated without default by the Buyer, the Buyer; and
 - (c) if this Contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

2.4 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, reference to a "Bank cheque" in clause 2.4:
 - (a) includes a cheque drawn by a building society or credit union on itself;
 - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in clause 2.4(2)(b) on the Settlement Date.

- (3) If both of the following apply:
- the sale is not an excluded transaction under section 14-215 of the Withholding Law; and
 - the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
 - an ATO Clearance Certificate; or
 - 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:
- for clause 2.4(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;
 - 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;
 - 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
 - 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.
- (4) For clause 2.4(3) 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:
- the Property includes items in addition to the Lot and Improvements; and
 - no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Lot and Improvements prepared by a registered valuer,
- in which case the market value of the Lot and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commission of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
- the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
 - prior to settlement the Buyer must lodge with the ATO:
 - a *GST Property Settlement Withholding Notification* form ("Form 1"); and
 - a *GST Property Settlement Date Confirmation* form ("Form 2");
 - on or before settlement, the Buyer must give the Seller copies of:
 - the Form 1;
 - confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
 - confirmation from the ATO that the Form 2 has been lodged; and

- a completed ATO payment slip for the Withholding Amount.
- 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
 - the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.
- ## 2.5 Adjustments to Balance Purchase Price
- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.5(3), 2.5(4), 2.5(5), 2.5(6), 2.5(7), 2.5(15) and 2.5(18), Outgoings for periods including the Settlement Date must be adjusted:
- for those paid, on the amount paid;
 - for those assessed but unpaid, on the amount payable (excluding any discount); and
 - for those not assessed:
 - on the amount the relevant authority or the Body Corporate advises will be assessed (excluding any discount); or
 - if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Lot at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
- the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the interest schedule lot entitlement of the Lot to the aggregate interest schedule lot entitlement of the Scheme; and
 - if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) Land tax must be adjusted:
- 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 Lot was the Seller's only land; or
 - based on the assumptions in clause 2.5(4)(a), if there is no separate Site Value for the Lot, on a notional Site Value equal to:
- | | | |
|------------------------|---|---|
| Site Value of the Land | x | Interest schedule lot entitlement of Lot |
| | | Aggregate interest schedule lot entitlement |
- (5) 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 Lot on payment of a specified amount, then the Buyer may deduct the specified amount from the Balance 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 2.5(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
 - (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority or the Body Corporate, as appropriate. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purpose of clause 2.5(2).
 - (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
 - (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
 - (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
 - (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.5(8), 2.5(9), 2.5(10) and 2.5(11).
 - (12) Payments under clause 2.5(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
 - (13) The Seller is liable for:
 - (a) any Special Contribution for which a levy notice has been issued on or before the Contract Date; and
 - (b) any other Body Corporate Debt (including any penalty or recovery cost resulting from non-payment of a Body Corporate Debt) owing in respect of the Lot at settlement.

The Buyer is liable for any Special Contribution levied after the Contract Date.
 - (14) If an amount payable by the Seller under clause 2.5(13) is unpaid at the Settlement Date, the Buyer may deduct the specified amount from the Balance Purchase Price at settlement and must pay it promptly to the Body Corporate.
 - (15) For the purposes of clause 2.5(13), an amount payable under an exclusive use by-law will be treated as levied on the date it is due.
 - (16) The cost of Bank cheques payable at Settlement:
 - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
 - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller.
 - (17) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
 - (18) Upon written request by the Buyer, the Seller will, prior to Settlement, give the Buyer a written statement, supported by reasonable evidence, of:
 - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and

- (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.5.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
 - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
 - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

4. BUILDING AND PEST INSPECTION REPORTS

- 4.1 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).
- 4.2 The Buyer must give notice to the Seller that:
 - (1) a satisfactory report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
 - (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 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.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 4.2.

5. SETTLEMENT

- 5.1 Time and Date
 - (1) Settlement must occur between 9am and 4pm AEST on the Settlement Date.
 - (2) If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
 - (a) any instrument of title for the Lot required to register the transfer to the Buyer; and
 - (b) unstamped Transfer Documents capable of immediate registration after stamping; and
 - (c) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2; and
 - (d) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys; and
 - (e) if there are Commercial Tenancies or Service Agreements:
 - (i) the Seller's copy of any Commercial Tenancy Documents or Service Agreement Documents;
 - (ii) a notice to each Tenant and Contractor advising of the sale and assignment of rights under this contract in the form required by law (if applicable); and
 - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond.
- (2) If the Keys are not delivered at Settlement under clause 5.3(1)(d), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

5.4 Assignment of Covenants and Warranties

At Settlement, the Seller assigns to the Buyer, the benefit of all:

- (1) covenants by the Tenant under the Commercial Tenancies;
 - (2) guarantees and Bonds supporting the Commercial Tenancies;
 - (3) the Seller's rights under the Service Agreements;
 - (4) manufacturers' warranties for the Included Chattels; and
 - (5) builders' warranties on the improvements,
- to the extent that they are assignable and the Buyer accepts the assignment. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

5.5 Bonds

On settlement, the Seller will:

- (1) allow as a deduction from the Balance Purchase Price any Bond received by the Seller from any Tenant and held by the Seller;
- (2) transfer control to the Buyer over any trust account or fund held on trust for Tenants as Bond; and
- (3) assign to the Buyer, Bank guarantees held in respect of any Tenant as a Bond. If any Bank guarantee is not assignable, the Seller will enforce the guarantee at the written direction and expense of the Buyer for the Buyer's benefit.

5.6 Indemnity

The Buyer indemnifies the Seller in respect of claims by Tenants for the return of Bonds held or controlled by the Seller before settlement which are dealt with under clause 5.5 of this contract.

5.7 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Lot and Exclusive Use Areas except for the Tenancies. Title to the Included Chattels passes at settlement.

5.8 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.8(2) or 5.8(3).

6. TIME

- 6.1** Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

6.2 Suspension of Time

- (1) This clause 6.2 applies 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:
 - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
 - (b) 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.
- (2) 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.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.
- (4) 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.
- (5) When the Suspension Period ends, whether notice under clause 6.2(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
 - (a) that the Suspension Period has ended;
 - (b) 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; and
 - (c) that time is of the essence.

- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.2:
- (a) "Affected Party" means a party referred to in clause 6.2(1);
 - (b) "Delay Event" means:
 - (i) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
 - (ii) riot, civil commotion, war, invasion or a terrorist act;
 - (iii) an imminent threat of an event in paragraphs (i) or (ii); or
 - (iv) compliance with any lawful direction or order by a Government Agency;
 - (c) "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;
 - (d) "Settlement Obligations" means, in the case of the Buyer, its obligations under clauses 2.4(1) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a)-(e) and 5.7;
 - (e) "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.

7. MATTERS AFFECTING THE PROPERTY

7.1 Title

The Lot is sold subject to the *Body Corporate and Community Management Act 1997* and the by-laws of the Body Corporate.

7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances, Tenancies, statutory easements implied by part 6A of the *Land Title Act 1994* and interests registered on the common property for the Scheme.

7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

7.4 Seller's Warranties

- (1) The Seller warrants that, except as disclosed in this contract, at settlement:
 - (a) it will be the registered owner of an estate in fee simple in the Lot and will own the Improvements and Included Chattels;
 - (b) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
 - (c) there will be no unsatisfied judgment, order (except for an order referred to in clause 7.6(1)(b)) or writ affecting the Property.
- (2) The Seller warrants that, except as disclosed in this contract, at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgement, order or writ affecting the Property.
- (3) The Seller warrants that, except as disclosed in this contract, at the Contract Date:

- (a) there is no unregistered lease, easement or other right capable of registration and which is required to be registered to give indefeasibility affecting the common property or Body Corporate assets;
 - (b) there is no proposal to record a new community management statement for the Scheme and it has not received a notice of a meeting of the Body Corporate to be held after the Contract Date or notice of any proposed resolution or a decision of the Body Corporate to consent to the recording of a new community management statement for the Scheme;
 - (c) all Body Corporate consents to improvements made to common property and which benefit the Lot, or the registered owner of the Lot, are in force; and
 - (d) the Additional Body Corporate Information is correct (if completed).
- (4) If the Seller breaches a warranty in clause 7.4(1) or clause 7.4(2), the Buyer may terminate this contract by notice to the Seller.
- (5) If:
- (a) the Seller breaches a warranty in clause 7.4(3); or
 - (b) the Additional Body Corporate Information is not completed;
- and, as a result, the Buyer is materially prejudiced, the Buyer may terminate this contract by notice to the Seller given with 14 days after the Contract Date but may not claim damages or compensation.
- (6) Clauses 7.4(4) and 7.4(5) do not restrict and statutory rights the Buyer may have which cannot be excluded by this contract.
- (7) (a) The Seller warrants that, except as disclosed in this contract or a notice is given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the Contract Date:
- (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
 - (ii) 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.
- (b) If the Seller breaches a warranty in clause 7.4(7), the Buyer may:
- (i) terminate this contract by notice in writing to the Seller given no later than 2 Business Days before the Settlement Date; or
 - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (8) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

- (1) The Buyer may survey the Lot.
- (2) If there is:
 - (a) an error in the boundaries or area of the Lot;
 - (b) an encroachment by structures onto or from the Lot; or
 - (c) a mistake or omission in describing the Lot or the Seller's title to it;
 which is:
 - (d) immaterial; or

- (e) material, but the Buyer elects to complete this contract;
the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).
- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

7.6 Requirements of Authorities

- (1) Subject to clause 7.6(5), any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property ("**Work or Expenditure**") must be fully complied with:
 - (a) if issued before the Contract Date, by the Seller before the Settlement Date;
 - (b) if issued on or after the Contract Date, by the Buyer.
- (2) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under section 246AG of the *Building Act 1975* that affects the Property. The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* that affects the Property or Land.
- (5) Clause 7.6(1) does not apply to orders disclosed under section 83 or the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

7.7 Property Adversely Affected

- (1) If at the Contract Date:
 - (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 Lot 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 omission in the Seller's title under clause 7.5(2)(c);

- (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*; or
- (h) there is a charge against the Lot under section 104 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth),

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.

- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to:
 - (a) inspect records held by any authority, including Security Interests on the PPSR, relating to the Property or the Lot; and
 - (b) apply for a certificate of currency of the Body Corporate's insurance from any insurer.

7.8 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 Lot and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Commercial Tenancies that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer to perform.

8.4 Body Corporate Meetings

- (1) The Seller must promptly give the Buyer a copy of:
 - (a) any notice it receives of a proposed meeting of the Body Corporate to be held after the Contract Date; and
 - (b) resolutions passed at that meeting and prior to settlement.
- (2) The Buyer may terminate this Contract by Notice in writing to the Seller given before settlement if it is materially prejudiced by:

- (a) any resolution of the Body Corporate passed after the Contract Date, other than a resolution, details of which are disclosed to the Buyer in this Contract; or
 - (b) where the Scheme is a subsidiary scheme, any resolution of a body corporate of a higher scheme.
- (3) In clause 8.4(2) a resolution includes a decision of the Body Corporate Committee to consent to recording a new community management statement.
- (4) If the Buyer is not given a copy of the resolutions before settlement, it may sue the Seller for damages.

8.5 Information Regarding the Property

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR.

8.6 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
 - (a) create a relationship of landlord and tenant; or
 - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

8.7 Seller's Obligations After Contract Date

- (1) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work on the Property, give a copy to the Buyer.
- (2) After the Contract Date, the Seller must not without written consent of the Buyer, give any notice, seek or consent to any order or make an agreement that affects the Property.

9. PARTIES' DEFAULT

9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract, or any right at law or in equity, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract.

9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:
 - (a) any deficiency in price on a resale; and
 - (b) its expenses connected with any repossession, any failed attempt to resell, and the resale, provided the resale settles within 2 years of termination of this contract.
- (2) Any profit on a resale belongs to the Seller.

9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
 - (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.
- (2) Interest continues to accrue:
 - (a) under clause 9.9(1)(a), from the date it is due until paid; and
 - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(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.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

10. COMMERCIAL TENANCIES

10.1 Seller's Statement

- (1) Within a reasonable time after written request by the Buyer, the Seller must give the Buyer:
 - (a) a statement of Outgoings which cannot be discovered by search; and

- (b) a notice under section 262A(4AH) of ITAA (if applicable to the Property).
- (2) The Seller must update the statement if the Seller becomes aware that it has become inaccurate in a material respect.
- (3) The Seller warrants that the statement and notice will be accurate at the Settlement Date.

10.2 Commercial Tenancies and Service Agreements

The Seller states that details of all Commercial Tenancies and Service Agreements affecting the Property are disclosed in the Commercial Tenancy Schedule and Service Agreement Schedule respectively.

10.3 Commercial Tenancy Warranties

The Seller warrants that, except as disclosed in this contract, the following are correct at the Contract Date:

- (1) details of the Commercial Tenancies set out in the Commercial Tenancy Schedule;
- (2) each of the Commercial Tenancies is valid and subsisting;
- (3) no Tenant is in arrears with the payment of any Rent or other money payable under any Commercial Tenancy;
- (4) there is no subsisting breach of a provision of any Tenancy Document;
- (5) there is no notice or correspondence between the Seller and any Tenant relating to Rent review or the exercise of an option for renewal;
- (6) for each Commercial Tenancy, the relevant Commercial Tenancy Documents constitute the entire agreement between the Seller and each Tenant and there is no written, oral or other agreement between the Seller and any Tenant varying the terms of a Commercial Tenancy or granting any additional option for renewal of the term of any Commercial Tenancy;
- (7) no Tenant received any incentive or inducement to enter into its initial or current Commercial Tenancy;
- (8) there is no pending litigation or arbitration between the Seller and any Tenant arising out of any of the Commercial Tenancies; and
- (9) if any Commercial Tenancy is a retail shop lease within the meaning of the *Retail Shop Leases Act 1994*
 - (a) as far as the Seller is aware the Seller has complied with the *Retail Shop Leases Act 1994* in relation to the Commercial Tenancy;
 - (b) there is no existing or renewed retail tenancy dispute in relation to a Commercial Tenancy;
 - (c) there are no mediation agreements, proceedings or orders in existence under the *Retail Shop Leases Act 1994* in respect of a Commercial Tenancy;
 - (d) no Tenant has notified the Seller requesting a right to renew any Commercial Tenancy for a further period; and
 - (e) no Tenant has made a claim against the Seller for compensation for loss or damage suffered by the Tenant under sections 43, 46G or 46K of the *Retail Shop Leases Act 1994* and there are no circumstances existing to the Seller's knowledge which might give rise to a claim for compensation.

10.4 Inaccuracies

The Buyer may terminate this contract by notice in writing to the Seller if a warranty contained in clause 10.3 is inaccurate and the Buyer is materially prejudiced by that inaccuracy.

10.5 Commercial Tenancy Documents

- (1) The Seller must produce to the Buyer's Solicitor within 7 days after the Contract Date copies of all Commercial Tenancy Documents and Service Agreements.
- (2) If the Seller does not deliver the Commercial Tenancy Documents when required under clause 10.5(1), the Buyer may terminate this contract by notice to the Seller given no later than 14 days after the Contract Date.
- (3) If the Buyer is not satisfied with the terms of the Commercial Tenancies, it may terminate this contract by notice to the Seller given no later than 7 days after the Buyer's receipt of the Commercial Tenancy Documents.
- (4) If no notice is given under this clause 10.5, the Buyer will be treated as having accepted the Commercial Tenancies and all matters referred to in the Commercial Tenancy Documents.

10.6 Dealings with Commercial Tenancies

- (1) Unless it would breach a provision of, or waive or prejudice the Seller's rights under, a Commercial Tenancy, the Seller must not, after the Contract Date:
 - (a) deal with the Property or any of the Commercial Tenancies without the Buyer's consent (which must not be unreasonably withheld);
 - (b) accept a surrender of any Commercial Tenancy;
 - (c) consent to a transfer of any Commercial Tenancy;
 - (d) terminate any Commercial Tenancy;
 - (e) consent to any request by a Tenant;
 - (f) grant or agree to grant a new Commercial Tenancy of any part of the Property or an extension of a Commercial Tenancy other than where a Tenant validly exercises an option in a Commercial Tenancy; or
 - (g) initiate or negotiate a Rent review or respond to any Rent review notice from a Tenant.
- (2) If any Tenant seeks the Seller's consent under a Commercial Tenancy before Settlement:
 - (a) the Seller must inform the Buyer and give the Buyer a copy of any written material received from the Tenant;
 - (b) the Buyer must co-operate with the Seller in dealing with the application;
 - (c) the Buyer must inform the Seller whether it agrees to the Seller giving consent and any conditions which should be imposed by the Seller;
 - (d) the Buyer must not withhold or delay its agreement to the Seller giving consent except on reasonable grounds which must be indicated in writing to the Seller; and
 - (e) the Seller must not give its consent to any Tenant without having first obtained the Buyer's agreement to do so in accordance with this clause.
- (3) If any Tenant defaults in the payment of Rent, the Seller must promptly inform the Buyer in writing. The Buyer may require the Seller to do either or both of the following actions at the Seller's expense:
 - (a) serve on the Tenant a notice of breach of covenant if required by law;
 - (b) terminate the Commercial Tenancy by physical re-entry (subject to the provisions of the Commercial Tenancy).

- (4) The Seller must give the Buyer copies of any documents relating to the Commercial Tenancies that come within the control or possession of the Seller between the Contract Date and settlement.

10.7 Service Agreements

- (1) The Seller:
- (a) may terminate any Service Agreement which is not capable of assignment (subject to the provisions of the relevant Service Agreement); and
 - (b) indemnifies the Buyer against claims under the Service Agreements prior to the Settlement Date.
- (2) The Buyer:
- (a) assumes the obligations of the Seller under those Service Agreements which are assigned until their termination; and
 - (b) indemnifies the Seller against claims under Service Agreements after the Settlement Date.
- (3) If:
- (a) the Seller cannot terminate a Service Agreement; or
 - (b) the Seller's rights under a Service Agreement cannot be assigned or are not effectively assigned to the Buyer;
- the Seller must enforce that Service Agreement at the direction of the Buyer for the Buyer's benefit.

10.8 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 may be signed using an Electronic Signature.

11. GOODS AND SERVICES TAX

11.1 Definitions

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

11.2 GST Table

The GST Table and the notes in it are part of this clause 11.

11.3 Taxable Supply

This clause 11 applies where the transaction is:

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

11.4 Purchase Price Includes GST

If this clause 11.4 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.

11.5 Purchase Price Does Not Include GST

If this clause 11.5 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.

11.6 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 11.6 applies:

- (1) 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.
- (2) the Seller:
 - (a) must apply the Margin Scheme to the Supply of the Property; and
 - (b) warrants that the Margin Scheme is able to be applied.
- (3) if the Seller breaches clause 11.6(2)(a) or its warranty under clause 11.6(2)(b) then:
 - (a) the Buyer may terminate this contract if it becomes aware of the breach prior to the Settlement Date;
 - (b) if the Buyer does not terminate this contract under clause 11.6(3)(a) 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;
 - (c) the Buyer is entitled to compensation from the Seller if there is a breach of clause 11.6(2).

11.7 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 11.7 applies:

- (1) the Purchase Price does not include any amount for GST;
- (2) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (3) the Seller warrants that:
 - (a) between the Contract Date and the Settlement Date the Seller will carry on the Enterprise; and
 - (b) 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;
- (4) the Buyer warrants that at the Settlement Date it is Registered or Required to be Registered under the GST Act;
- (5) if either of the warranties in clause 11.7(3) is breached:
 - (a) the Buyer may terminate this contract if it becomes aware of the breach prior to the Settlement Date;
 - (b) 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;
 - (c) 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;
 - (d) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty.

- (6) if the warranty in clause 11.7(4) 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;
- (7) 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.

11.8 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.

11.9 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.

11.10 No Merger

To avoid doubt, the clauses in this clause 11 do not merge on settlement.

11.11 Remedies

The remedies provided in clauses 11.6(3), 11.7(5) and 11.7(6) are in addition to any other remedies available to the aggrieved party.

12. GENERAL

12.1 Agent

The Agent is appointed as the Seller's agent to introduce a buyer.

12.2 Foreign Buyer Approval

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* (Cth).

12.3 Duty

The Buyer must pay all duty on this contract.

12.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.
- (3) Notices under this contract or notices 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).
- (4) Subject to clause 12.4(5), a notice given after this contract is entered into in accordance with clause 12.4(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.

- (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.
- (6) If two or more notices are treated as given at the same time under clause 12.4(5), they will be treated as given in the order in which they were sent or delivered.
- (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.
- (8) For the purposes of clause 12.4(3)(c) and clause 14.2 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.

12.5 Business Days

- (1) 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.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

12.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

12.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

12.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

12.9 Interpretation

(1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

(2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

(3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

(4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

(5) Headings

Headings are for convenience only and do not form part of this Contract or affect its interpretation.

12.10 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.

13. ELECTRONIC SETTLEMENT

13.1 Application of Clause

- (1) Clause 13 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.
- (2) Acceptance of an invitation to an Electronic Workspace is taken to be an agreement for clause 13.1(1).
- (3) Clause 13 (except clause 13.5(3)) ceases to apply if either party gives notice under clause 13.5 that settlement will not be an Electronic Settlement.

13.2 Completion of Electronic Workspace

- (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.
- (2) If the parties cannot agree on a time for settlement, the time to be nominated in the Workspace is 4pm AEST.
- (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 account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (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 13.2(4)(a);
 - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
 - (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.

13.3 Electronic Settlement

- (1) Clauses 5.1(2) and 5.2 do not apply.

- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.4(1).
- (3) The Seller and Buyer will be taken to have complied with:
 - (a) clause 2.4(3)(c), (e) and (f); and
 - (b) clause 2.4(5)(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.
- (4) The Seller will be taken to have complied with clause 5.3(1)(b), (c), (d), and (e) 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 (if requested under clause 5.3(1)(d)) 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.
- (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.
- (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.
- (7) Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

13.4 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.

13.5 Withdrawal from Electronic Settlement

- (1) Either party may elect not to proceed with an Electronic Settlement by giving written notice to the other party.
- (2) A notice under clause 13.5(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.
- (3) If clause 13.5(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.

13.6 Costs

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

13.7 Definitions for clause 13

In clause 13:

"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.

14. ELECTRONIC CONTRACT AND DISCLOSURE

14.1 Electronic Signing

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

14.2 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.