
Contract for Commercial Land and Buildings

Third Edition GST Reprint

**THIS CONTRACT IS MADE BETWEEN THE SELLER AND THE BUYER.
THE SELLER AGREES TO SELL AND THE BUYER 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 or 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 Leased 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 (Third Edition GST Reprint) adopted by the Real Estate Institute of Queensland.

4. The Seller and the Buyer each acknowledge having received a copy of the Standard Commercial Conditions at the time of signing this Contract.

INITIALS

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ITEMS SCHEDULE

A CONTRACT DATE
NOTE 1 The 28 day of April 2015
MONTH YEAR

B SELLER'S AGENT:
NAME: Wright Property Corp Pty Ltd
ADDRESS: PO Box 3061
SUBURB: NEWSTEAD STATE: QLD POSTCODE: 4006
PHONE: (07) 3852 2280 FAX: (07) 3852 2281 EMAIL: info@wrightproperty.com.au LICENCE NO. 2508169 ABN: 71950114943

C SELLER/S:
NAME: SP & AM Gilmour Pty Ltd ACN 119 542 915 as trustee for the Gilmour Investment Trust
ADDRESS: PO BOX 5309
SUBURB: KENMORE EAST STATE: QLD POSTCODE: 4069
PHONE: FAX: MOBILE: EMAIL: stevie@scotiaaccess.com.au ABN:
NAME:
ADDRESS:
SUBURB:
PHONE: FAX: MOBILE: EMAIL: ABN:

D SELLER'S SOLICITOR:
NAME: Rouse Lawyers - Matthew Wertheimer
ADDRESS: Suite 4/ 92 Commercial Road
SUBURB: NEWSTEAD STATE: QLD POSTCODE: 4006
PHONE: 07 3646 9900 FAX: 07 3646 9911 MOBILE: EMAIL: mwertheimer@rouselawyers.com.au ABN:

E BUYER/S:
NAME: Citation Properties Pty Ltd ACN: 603 129 353 ATF Citation Properties No 1 unit Trust
ADDRESS: 12 Holden Ave
SUBURB: EPPING STATE: NSW POSTCODE: 2121
PHONE: FAX: MOBILE: EMAIL: ABN:
NAME:
ADDRESS:
SUBURB:
PHONE: FAX: MOBILE: EMAIL: ABN:

F BUYER'S SOLICITOR:
NAME: Ian K Fry
ADDRESS: 136 Bay Terrace
SUBURB: WYNNUM STATE: QLD POSTCODE: 4178
PHONE: 07 3393 3688 FAX: 07 3393 3937 MOBILE: EMAIL: admin@frylaw.com.au ABN:

G STAKEHOLDER:
NAME: Wright Property Corp Pty Ltd PHONE: (07) 3852 2280

INITIALS

H PARTICULARS OF LAND SOLD:

ADDRESS: 161 Railway Parade

SUBURB: THORNESIDE

STATE: QLD POSTCODE: 4158

NOTE 2
(See
Warning)

Present Use: (if any) Industrial/Office/Warehousing

Description: Lot 32 on RP 92563

County: STANLEY

Parish: CAPALABA

Title Reference: 13335006

Area: 2509sqm ← more or less

NOTE 3

Type of Holding: Freehold

Lease No: _____

Local Government: Redland City Council

I

IMPROVEMENTS INCLUDED IN SALE:

NOTE 4

Nature of Buildings: Shed

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

Exclusions:

J

OTHER CHATTELS INCLUDED IN SALE:

← Attach Inventory if insufficient space

K

THE LAND IS SOLD AS:

Choose which applies →



Freehold

← Subject to the reservations exceptions and conditions in the deed of the grant



Leasehold

← Subject to the conditions of the Crown leasehold title

L

ENCUMBRANCES:

Is the Property sold subject to any Encumbrances?



No



Yes, listed below:

← 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.

M

LEASES AND SERVICE CONTRACTS:

NOTE 5

See Lease Schedule and Service Contract Schedule.

N

PURCHASE PRICE:

\$ 1,250,000.00

O

DEPOSIT:

CLAUSE 3

\$ 62,500 payable within 2 Business Days from the buyers receipt of an executed copy of this contract

P

DEFAULT INTEREST:

CLAUSE 11
&
NOTE 6

_____ % simple interest per annum.

Q

DATE FOR COMPLETION:

CLAUSE
25.3

Date: SR 45 90 days from date of contract

R

CITY OR TOWN FOR COMPLETION:

CLAUSES
25.1 & 25.2

Brisbane

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Handwritten signature and initials

FINANCE

NOTE 7 SUBJECT TO FINANCE:

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

CLAUSE 31

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:

Bank or financial institution at the purchasers discretion

T

THE APPROVAL DATE:

The 21st day from date of 1 contract

OR

U

AMOUNT OF LOAN:

\$ Sufficient to complete

V

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

W

NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011

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

(select whichever is applicable)

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

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

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

GOODS AND SERVICES TAX - WARNING

Marking the GST items in the Items Schedule 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 Seller'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 GST 1 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:

- > Item GST1 and GST3 must not be marked;
- > despite any marking of Items GST1 and GST3, Clauses 34.4, 34.5 and 34.7 do not apply.

GST1 GOING CONCERN:

Is this a sale of a Going Concern?

Yes ☐

If Yes, Clause 34.7 (If the Supply is a Going Concern) applies.

Otherwise Clause 34.7 (If the Supply is a Going Concern) does not apply.

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

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

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SELLER'S AGENT

SJP

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Signature and initials

GST2 MARGIN SCHEME:Is the Margin Scheme to apply to the sale of the Property? Yes ☐

If Yes, Clause 34.6 (Margin Scheme) applies.

Otherwise Clause 34.6 (Margin Scheme) does not apply.

The Seller must not apply the Margin Scheme to the Supply of the Property if Clause 34.6 does not apply.

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

GST3 INCLUSIVE OR EXCLUSIVE PURCHASE PRICE:

Does the Purchase Price include GST?

Mark 1 box only →

Yes

☐

No

☒

If Yes, Clause 34.4 (Purchase Price includes GST) applies.

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

If neither box is marked or both boxes are marked, Clause 34.4 (Purchase Price includes GST) applies.

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

LEASE SCHEDULE*

See Clause 32 of Standard Commercial Conditions

PROPERTY ADDRESS:161 Railway ParadeTHORNESIDESTATE: QLDPOSTCODE: 4158**LEASE 1:**

Name of Tenant: _____

Use: _____

Location / Tenancy No: _____

Area of Tenancy (m)²: _____

Current Rental per Annum: \$ _____

Current Lease Commencement Date: _____

Current Lease Term: _____

Remaining Option/s:

Option 1

Term: _____

Years: _____

Option 2

Term: _____

Years: _____

Option 3

Term: _____

Years: _____

Tenant Carpark:

No.: _____

Rate: \$ _____

per

☐

annum

☐

month

LEASE 2:

Name of Tenant: _____

Use: _____

Location / Tenancy No: _____

Area of Tenancy (m)²: _____

Current Rental per Annum: \$ _____

Current Lease Commencement Date: _____

Current Lease Term: _____

Remaining Option/s:

Option 1

Term: _____

Years: _____

Option 2

Term: _____

Years: _____

Option 3

Term: _____

Years: _____

Tenant Carpark:

No.: _____

Rate: \$ _____

per

☐

annum

☐

month

* Attach further Schedule if insufficient space

INITIALS

SERVICE CONTRACT SCHEDULE*

See Clause 32 of Standard Commercial Conditions

PROPERTY ADDRESS

161 Railway Parade

THORNESIDE

STATE: QLD POSTCODE: 4158

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

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SPECIAL CONDITIONS

1. Due Diligence Condition

1.1 In this clause 1 "Due Diligence Date" means that day which is ^{21 SEP} 30 days after the Contract Date.

1.2 This Contract is made conditional upon the Buyer being satisfied in relation to all matters it considers relevant to the property including (but not limited to) investigation of the following:

- a) the title to the Property and the rights in respect of the Property;
- b) the accuracy of the description of Land;
- c) the boundaries of the Land and the existence of any encroachments of structures onto the Land or from the Land;
- d) the results of any enquiries or searches with the Local Government or any other statutory authority or body having jurisdiction over or about the Property;
- e) approvals issues by the local government or any other relevant statutory authority or body;
- f) the physical state and condition of the Property;
- g) the structural or any other technical inspections of the Property and services in or to the Property.

1.3 For the purpose of clause 1.2, the Seller:

- a) authorises the Buyer and its consultants to enter the property at all reasonable times; and
- b) authorises the Buyer to conduct any searches or enquiries about the Property with the Local Government or any other relevant statutory authority or body having jurisdiction over the Property.

1.4 If the Buyer is not entirely satisfied with its investigation under clause 1.2, the Buyer may terminate this Contract by notice in writing to the Seller given on or before 5:00pm on the Due Diligence Date.

1.5 Where the Buyer terminates the Contract under clause 1.4 the Deposit is to be refunded to the Buyer in full.

1.6 If the Buyer does not terminate this Contract under clause 1.4 then the condition specified in clause 1.2 will be taken as satisfied on the Due Diligence Date and this Contract will continue according to its terms.

2. Facsimile or email / Counterparts

This Contract can be executed by way of exchange of facsimiles or email and in counterparts, with all of such counterparts comprising the same Contract.

The approval 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 Seller and the Buyer consult their respective legal advisers prior to signing this Contract.

SIGNATURES:

Witness:

Witness:

Seller:

Buyer:

STAKEHOLDER'S ACKNOWLEDGEMENT:

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

Stakeholder's
Signature:

Licence No.: 2508169

INITIALS

Standard Commercial Conditions | Commercial Land and Buildings

Third Edition - GST Reprint

Approved by the Real Estate Institute of Queensland for conveyances of Torrens Title and Crown Leasehold Title of Commercial Land and Buildings.

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;
 - (d) "Buyer" means the party named in Item E;
 - NOTE 6 (e) "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;
 - (f) "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;
 - (g) "Deposit" means the sum stated in Item O;
 - (h) "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;
 - (i) "Enterprise" means the enterprise (as the term is defined in the GST Act) carried on using the Property;
 - (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) "Financial Institution" means bank, building society or credit union;
 - (m) "Guarantee" means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
 - (n) "ITAA" means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997;
 - (o) "Item" means an item of particulars in the Items Schedule;
 - (p) "Keys" means implements or instruments necessary for the purposes of fastening or unfastening:
 - (i) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Land (whether or not such gate, door, grille, shutter or lift forms part of the Property);
 - (ii) any other lock attached to or included in the Property; and includes electronic devices and written records of all codes and combinations necessary for the purposes of fastening or unfastening any such lock;
 - (q) "Land" means the Land described in Item H;
 - (r) "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;
 - (s) "Local Government" means the relevant local government (and includes the Brisbane City Council);
 - (t) "PPSR" means the Personal Securities Register established under the Personal Property Securities Act 2000 (Cth);
 - (u) "Property" means the Property listed in Items H, I and J and includes any part of the Property;
 - (v) "Purchase Price" means the sum stated in Item N;

- (w) "Security Interests" means all security interests registered on the PPSR over the improvements and chattels listed in Items I and J;
- (x) "Seller" means the party named in Item C; and
- (y) "Seller's Agent" means the person named in Item B;
- (z) "Service Contract" for the purposes of Clause 32 of this Contract means any Contract between the Seller and another party pertaining to services performed for the benefit of the Property, which are capable of assignment, and which are set out in the Service Contract Schedule and "Service Contractor" means any party performing those services;
- (aa) "Solicitor" means a solicitor currently entitled to practice in Australia whether acting as Principal or Agent;
- (bb) "Stakeholder" means the person named in Item G or, where no person is named in Item G, the Seller's Agent;

- 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 Buyer to the Stakeholder immediately upon the formation of this Contract.
- 3.2 If the Buyer:
- (a) fails to pay the Deposit as provided in Clause 3.1;
 - (b) pays the Deposit by cheque which is post-dated; or
 - (c) pays the Deposit by cheque which is not honoured on presentation;
- then, the Buyer shall be in substantial breach of this Contract and the Seller may:
- (i) affirm this Contract and exercise the rights expressed in Clause 13.2; or
 - (ii) terminate this Contract and exercise the rights expressed in Clause 13.3.
- 3.3 The rights and powers conferred by clause 3.2 are in addition to any other rights the Seller may have at law or in equity.

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- 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 monies paid under this Contract shall be refunded to the Buyer by the Seller or the Stakeholder as the case may be but without interest, costs or damages and the same shall be accepted by the Buyer in full and final satisfaction of all claims.

4 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);
- NOTE 9 (b) a properly executed transfer for the Land in favour of the Buyer capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) and title to the Property (other than the Land) free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;
- (c) any declaration required, by the Stamp Act 1894 (Qld), to be furnished to procure the stamping of the transfer;
- (d) such other instruments or declarations as are required by law to be signed by the Seller to procure the stamping and/or registration of the transfer;
- (e) except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer;
- (f) notices of assignment issued pursuant to Clause 16.4;
- (g) all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property and which are exclusive to the Property;
- (h) true copies of all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the Standard Building Regulation 1993 (Qld) appropriate to the uses stated in Item H (if the improvements on the Land may not be lawfully occupied unless such certificate has issued);
- (j) all plans and drawings relating to the construction of the improvements on the Land in the possession or control of the Seller; and
- (k) all documents in the possession or control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare returns under the ITAA.

5 KEYS

- 5.1 Immediately on completion, the Seller shall deliver all Keys, which are in the possession or under the control of the Seller, in accordance with any notice given in writing by the Buyer to the Seller and failing such notice the Seller shall deliver the Keys:
- (a) to the Buyer, if the Buyer is present personally at Completion;
- (b) to the Buyer's Solicitor at Completion, if the Buyer is not present personally;
- (c) to the Seller's Agent at the address shown in Item B, if neither the Buyer nor any Solicitor acting for the Buyer is present personally at 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 Seller shall make a written record of all codes and combinations necessary for the purposes of fastening or unfastening any lock referred to in the definition of "Keys".

6 INVESTMENT OF DEPOSIT

- 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 Seller and the Buyer. If this Contract is not completed for any reason, the interest accruing on the Deposit shall be paid to the party entitled to the Deposit upon termination of this Contract.
- 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 four (4) Business Days following the date of this Contract.
- 6.5 The parties authorise 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 Seller and the Buyer shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of ITAA.

7 SELLER'S STATEMENT

- 7.1 The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Property.
- 7.2 The Seller states that, except as disclosed in this Contract, each of the following statements is accurate at the time the Seller executes this Contract:
- (a) the Seller has free and unqualified capacity and power to contract and to complete this Contract;
- (b) the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this Contract; and
- (c) if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the Completion of this Contract.
- 7.3 The Seller states that, except as disclosed in this Contract, each of the following statements will be accurate at the 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 judgement, order or writ of execution which effects the Property;
- (c) no order has been made under Part 11 of the Property Law Act 1974 (Qld) which would operate as a charge on the Land;
- (d) there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
- (e) no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Property may be rendered liable to forfeiture to the Crown;
- (f) if the Land is Crown Leasehold Title, the Crown Leasehold Title is not rendered liable to forfeiture by reason of the non-observance or non-performance of the covenants or conditions of the Lease;
- (g) if the Seller is a natural person, the Seller is not a bankrupt nor has the Seller signed any authority under Section 188 of the Bankruptcy Act 1966 (Cth);

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- (h) if the Seller is a corporation within the meaning of the *Corporations Act 2001* (Cth) or any similar legislation applicable in the Seller's place of incorporation;
- (i) the Seller is not in liquidation;
- (ii) no action has been taken by or against the Seller which could lead to the winding up of the Seller;
- (iii) the Seller is not under official management;
- (iv) an administrator, controller or managing controller has not been appointed to the Seller or in respect of the whole or any part of the Property; and
- (v) a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and

(i) the Seller is the registered owner or the Lessee of the Land (according to the title expressed or implied in this Contract).

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

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

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

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

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

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

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

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

8 ERRORS AND MISDESCRIPTIONS

8.1 If there is any immaterial mistake or error in the description or particulars of the Property or as to Title, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Buyer 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 Buyer does not exercise any right which the Buyer has at law to terminate this Contract, the Buyer shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the

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

9.2 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Buyer 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 Buyer shall be entitled to elect by notice in writing to the Seller 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 Buyer 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 Buyer with the Buyer's Obligations under or by virtue of this Contract the Seller shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Buyer obtains a good and valid title to the Property 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 Buyer and delivered to the Seller within a reasonable time prior to the Date for Completion.

10.2 If so requested by the Buyer, the Seller shall deliver to the Buyer, prior to the Date for Completion, photocopies of the documents executed by the Seller.

10.3 After execution of the transfer, if so requested by the Buyer and upon payment of the usual production fee by the Buyer, the Seller shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in Clause 4(c) and thereupon the Seller shall be deemed to have complied with the Seller'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 Seller shall not be obliged to deliver it to the Buyer but shall enter into such reasonable covenants with the Buyer as the Buyer may require for production of the instrument of title.

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

10.6 Where either Clause 10.4 or Clause 10.5 applies, the Buyer 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.

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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 Notwithstanding any other provision in this Contract, 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.

13 BUYER'S DEFAULT

13.1 If the Buyer:

- (a) fails to pay the balance of the Purchase Price as provided in Clause 4; or
 - (b) fails to comply with any of the terms or conditions of this Contract;
- then the Seller may:
- (i) affirm this Contract; or
 - (ii) terminate this Contract.

13.2 If the Seller affirms this Contract pursuant to Clause 3.2 or Clause 13.1, the Seller may:

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

13.3 If the Seller terminates this Contract pursuant to Clause 3.2 or Clause 13.1, the Seller may elect to:

- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Buyer for breach; or
- (c) 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 two (2) years from the date of termination any deficiency and any expense arising from such resale shall be recoverable by the Seller from the Buyer as liquidated damages;

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

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

14 PARTICULARS OF ADJUSTABLE ITEMS

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

- (a) a written statement of all rates, taxes, outgoings, rents and profits not capable of discovery by search or enquiry in any office of public record or pursuant to the provisions of any statute in respect of the Property; and
- (b) (where the Land is subject to a Lease) a written statement disclosing to the extent the same is not disclosed in the Lease Schedule:
 - (i) the names and postal addresses of any tenant or other occupier of the Land;
 - (ii) the amounts, the due days for and the manner of payment of all periodic sums payable in respect of the Lease;
 - (iii) the date to which the same shall have been paid; and
 - (iv) the amounts of any Bond held from any such tenant or other occupier and the identity of the party holding such Bond.

14.2 If the Seller 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 Seller shall immediately disclose that information to the Buyer by notice in writing.

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

15 ADJUSTMENTS

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

15.2 The Buyer shall pay or discharge all rates, taxes (including Land Tax) and other outgoings with respect to the Property from the Date of Possession.

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

- (a) in the case of those paid by the Seller, on the amount actually paid;
- (b) in the case of those levied but unpaid, on the amount payable disregarding any discount for early payment;
- (c) in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority disregarding any discount for early payment; and
- (d) in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the Date of Possession, on the amount payable in that separate assessment disregarding any discount for early payment.

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 Buyer, at the expense of the Buyer, shall read or procure the reading of any water meter installed on the Land no more than 5 days and no less than 3 days prior to the Date of Possession, and shall inform the Seller of the results of the water meter reading;
- (b) the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") shall be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in Clause 15.4(a) (no allowance being made for seasonal or other factors);
- (c) the likely assessment of water charges for the deemed water usage shall be calculated by using the method and rates then being used by the Local Government ("the likely assessment");
- (d) the likely assessment shall then be apportioned.

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- 15.5 Land Tax shall be apportioned on the basis that, as at midnight on the previous 30th June, the Seller owned no land other than the Seller'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 *Land Valuation Act 2010* (Qld) then Land Tax shall be apportioned on a deemed unimproved value which shall equal $(A \times B) / C$, where A is the unimproved value in effect under the *Land Valuation Act 2010* (Qld) 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 Seller 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 Buyer or the Buyer'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 Seller 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 Buyer, on the Date of Possession, a written undertaking, addressed to the Buyer 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 Seller and you as the Buyer for the sale of property situated at

2. On instructions from the Seller, I/we undertake to hold the retention amount, as Solicitor/s for the Seller, 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 Seller.

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.

E. 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 Seller 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 Seller instructs any Solicitor acting for the Seller in the conveyance to give the undertaking referred to in Clause 15.7 and agrees that the Seller shall be bound, personally, by the terms of the undertaking and will not require the payment to the Seller 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 Seller up to and including the Date of Possession and thereafter shall benefit the Buyer and shall be dealt with as follows:

- (a) all unpaid rents and profits in respect of any period terminating on or prior to the Date of Possession shall not be apportioned between the parties on completion but shall be recoverable by the Seller in accordance with Clause 16.3;
- (b) all rents and profits paid in advance of the Date of Possession shall be apportioned between the parties on 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 Buyer shall following completion keep the Seller indemnified in that respect.

- 16.3 The Seller assigns to the Buyer, 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 Seller or any predecessors in title of the Seller 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 Seller 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 Buyer but be recoverable by the Seller and to that extent Section 117 of the *Property Law Act 1974* (Qld) shall not apply. The Buyer agrees to retain records relating to the Leases and to produce the Leases and any records relating to the Leases in any proceedings commenced by the Seller to recover any unpaid rents and profits.

- 16.4 The Seller shall prepare and execute appropriate notices to give effect to the assignments in Clause 16.3.

17 LIABILITY OF BUYER

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

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

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

- (a) accept or agree to accept a surrender of any Lease;
- (b) grant any Lease for any part of the Property which is vacant at the date of this Contract or which may become vacant prior to 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 Seller shall permit the Buyer or any person authorised by the Buyer 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.

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

19 CONSENTS

If any consent is required by statute to the sale or the performance of any obligation under or by virtue of this Contract, this Contract is subject to such consent being given and the party who is required, by the statute, to obtain such consent ("Applicant") shall apply for the consent and pursue the application. The Applicant shall pay all costs and fees (other than the other party's Solicitor's) in respect of the application. The other party shall if and when required by the Applicant immediately join in the application and/or shall supply such information as shall be reasonably required in support of the Application. If the consent is refused or not granted by the 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 Seller or some other person a notice in writing pursuant to Sections 21 and 22 of the *Building Act 1975* (Qld) in respect of any building or structure on the Land and the notice is current at the Date for Completion the Buyer may by notice in writing to the Seller 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 Seller 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 Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.

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

21 PROPERTY ADVERSELY AFFECTED

21.1 If 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, resisting 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 Buyer may by notice in writing to the Seller given on or before the Date for Completion terminate this Contract.

21.2 The Seller authorises the Buyer or the Buyer'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 Buyer 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 Seller to the Buyer shall be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

24 MERGER

Despite completion and despite the registration of the transfer in favour of the Buyer, 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 agreements to place, completion shall be effected at:

(a) the office of the Solicitor for the Seller in the city or town named in Item R; or

(b) if the Seller has no solicitor in that city or town the office of the solicitor for the Buyer 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* (Qld).

25.2 Despite Clause 25.1 if a mortgage is to be discharged on completion the Seller may by notice in writing to the Buyer given not less than two (2) Business Days prior to the Date for Completion require completion to take place at the office of the Seller's mortgagee in the city or town named in Item R or if such mortgagee does not have an office in that city or town at the office of such mortgagee in Queensland nearest to that city or town.

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.

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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 Seller pursuant to Clause 32, may be given to the Seller's Agent as if the Seller'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 pre-paid 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 Seller be the address specified in Item C and in the case of the Buyer 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 Buyer or the Stakeholder to the Seller shall be paid to the Seller or as the Seller'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 Seller shall at the Seller's own expense reinstate and make good prior to delivery of possession any damage done to the improvements in removing that property and if the Seller fails to do so the Buyer may do so and recover the costs of so doing from the Seller as a liquidated debt.

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

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

29 CHATTELS AND INCLUSIONS

29.1 Title to any chattels agreed to be sold by or under this Contract shall pass at completion.

29.2 The Seller assigns to the Buyer 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 Seller in respect of the chattels agreed to be sold. The Seller shall deliver to the Buyer at completion all documents in the possession or control of the Seller evidencing the warranties referred to in this Clause which would be sufficient to enable the Buyer to enforce those warranties.

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

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

30 APPOINTMENT OF AGENT

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

31 FINANCE CLAUSE

31.1 If Items S, T and U are not deleted, this Contract is subject to the Buyer obtaining 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 Buyer and if the Buyer does not obtain such approval for any reason not being attributable to the Buyer's own default, the Buyer may terminate this Contract by notice in writing given to the Seller.

31.2 The Buyer shall take all steps reasonably necessary to obtain such approval, and the onus of establishing this shall be upon the Buyer.

31.3 The Buyer may waive the benefit of the condition contained in Clause 31.1 by giving notice in writing to the Seller within two (2) Business Days from the approval date.

31.4 If the Buyer obtains such approval the Buyer shall give notice in writing of such approval to the Seller promptly and in any event within two (2) Business Days from the approval date.

31.5 If the Buyer:

- (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 Buyer has obtained such approval;

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within two (2) Business Days from the approval date then, instead of any other remedy available to the Seller by reason of the failure of the Buyer to fulfil the Buyer's Obligations under this Clause 31 and despite any continuing right which the Buyer may have to terminate this Contract under Clause 31.1, the Seller may at the Seller's option, by notice in writing to the Buyer (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 Seller's Statement

Where the Property is sold subject to any Lease or Service Contract, the Seller states that, except as disclosed in this Contract, each of the following statements shall be accurate at the 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 Seller is aware that would render any Lease liable to forfeiture nor has the Seller agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Buyer prior to execution of this Contract;
- (d) the Seller is not aware of any breach by the Seller of any Lease or Service Contract;
- (e) where any of the Leases are "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 Seller apply:
 - (i) as far as the Seller is aware the Seller has in all respects complied with the Act in relation to the Leases;
 - (ii) no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
 - (iii) there are no mediation agreements, Retail Shop Leases Tribunal proceedings or Orders in existence in respect of any Lease;
 - (iv) no tenant has notified the Seller requesting the right to renew any Leases for a further period;
 - (v) no tenant has made a claim upon the Seller to pay compensation for loss or damage suffered by the tenant by virtue of Section 43 of the Act nor are there any circumstances existing to the Seller's knowledge which might give rise to a claim for such compensation.

32.2 Inaccurate Statement

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

32.3 Acceptance of Lease and Service Contract Terms

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

(2) If

- (a) the Seller does not deliver to the Buyer or the Buyer's Solicitor true copies of all Leases and Service Contracts pursuant to Clause 32.3(1); or
- (b) true copies of all Leases and Service Contracts have been delivered pursuant to Clause 32.3(1) and the Buyer is not satisfied with any of the terms and conditions of any Lease or Service Contract,

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

- (3) If the Buyer does not give written notice to the Seller pursuant to Clause 32.3(2)(a) or 32.3(2)(b), the Buyer agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Seller in the Lease Schedule and the Service Contract Schedule from the Date for Completion as if the Buyer were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Seller.
- (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 outgoings for the purposes of Clause 15 and shall be apportioned accordingly.

33 FOREIGN INTERESTS

NOTE 10 The Buyer warrants that:

- (a) the Buyer is not a "foreign person" within the meaning of Section 21A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as the meaning of that expression is extended by the operation of Section 4(6) of that Act; and
- (b) the Buyer 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* (Cth) 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 Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

34.5 Purchase Price Does Not Include GST

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

34.6 Margin Scheme

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

If this Clause 34.6 applies:

- (a) the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property;
- (b) the Seller:
 - (i) must apply the Margin Scheme to the Supply of the Property; and
 - (ii) warrants that the Margin Scheme is able to be applied;
- (c) if the Seller breaches Clause 34.6(b)(i) or its warranty under Clause 34.6(b)(ii) then:
 - (i) the Buyer may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;

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- (ii) If the Buyer does not terminate this Contract under Clause 34.6(c)(i) or does not become aware of the breach until after the Date for Completion, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable for the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
- (iii) the Buyer is entitled to compensation from the Seller if there is a breach of Clause 34.6(b).

34.7 If the Supply is a Going Concern

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

If this Clause 34.7 applies:

- (a) the Purchase Price does not include any amount for GST;
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (c) the Seller warrants that:
 - (i) between the date of this Contract and the Date for Completion the Seller will carry on the Enterprise; and
 - (ii) the Property (together with any other things that must be provided by the Seller to the Buyer at the 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 Buyer 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 Buyer may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;
 - (ii) if the Buyer does not terminate this Contract then, at the Date for Completion, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property;
 - (iii) if the Buyer does not become aware of the breach until after the Date for Completion, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable in respect of the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
 - (iv) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty;
- (f) if the warranty in Clause 34.7(d) is not correct the Buyer must pay to the Seller an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the 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 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 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 Seller must give to the Buyer 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 Seller should ensure that the present use described in Item H is a lawful use.

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

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

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

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

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

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

If this Contract is not to be subject to finance Items S, T and U must be deleted and initialed 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 acknowledgment 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 acknowledgments of Stakeholder on behalf of the company.

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

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

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