

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*]

Latent or Patent Defects in Common Property or Body Corporate Assets
[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)]

Actual or Contingent or Expected Liabilities of Body Corporate
[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)]

Circumstances in Relation to Affairs of the Body Corporate
[Section 223(3) *Body Corporate and Community Management Act 1997*]

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

Exceptions to Statements in Clause 7.4(2)

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

Terms of Contract

For Commercial Lots in a Community Titles Scheme

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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
- (2) (a) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clause 2.5;
- (b) **"Bank"** means:
 - (i) an entity carrying on banking business as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
 - (ii) a bank constituted under a law of a state;
- (c) **"Body Corporate"** means the body corporate of the Scheme;
- (d) **"Bond"** includes any security for the performance of any obligation under a Commercial Tenancy;
- (e) **"Building"** means any building that forms part of the Lot or in which the Lot is situated;
- (f) **"Business Day"** means a week day other than a Saturday, Sunday or public holiday in the Place for Settlement;
- (g) **"Commercial Tenancies"** means the tenancies referred to in the Commercial Tenancies Schedule;
- (h) **"Commercial Tenancy Documents"** means all agreements, deeds of covenant and other documents relating to the Commercial Tenancies;
- (i) **"Contractor"** means any party performing services under a Service Agreement;
- (j) **"Disclosure Statement"** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997* ;
- (k) **"Encumbrances"** includes unregistered and statutory encumbrances;
- (l) **"Financial Institution"** means a Bank, building society or credit union;
- (m) **"GST"** means the goods and services tax under the *GST Act*;
- (n) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (o) **"Improvements"** means fixed structures in the Lot (such as hot water systems, fixed carpets, curtains, blinds and their fittings, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
- (p) **"ITAA"** means the *Income Tax Assessment Act 1936* ("**1936 Act**") and the *Income Tax Assessment Act 1997* ("**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;
- (q) **"Land"** means the Scheme land;
- (r) **"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) regular periodic contributions payable to the Body Corporate (other than Special Contributions);
- (s) **"Plan"** means the building units, group titles or survey plan containing the Lot;
- (t) **"Property"** means:
 - (i) the Lot;
 - (ii) the Improvements; and
 - (iii) the Included Chattels;
- (u) **"Regulation Module"** means the regulation module for the Scheme;
- (v) **"Rent"** means any periodic amount, including outgoings, payable under the Commercial Tenancies;
- (w) **"Reserved Items"** means the Excluded Fixtures and all chattels in the Lot other than the Included Chattels;
- (x) **"Scheme"** means the community titles scheme containing the Lot;
- (y) **"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;
- (z) **"Service Agreement Documents"** means the Service Agreements and all other documents relating to the Service Agreements;
- (aa) **"Special Contribution"** means an amount:
 - (i) 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; or
 - (ii) payable in connection with an exclusive use by-law;
 that is not an Outgoing;
- (bb) **"Tenant"** means a tenant under the Commercial Tenancies; and

(cc) "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 to stamp or register the transfer.

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 dishonoured on presentation.
- (3) The Seller may recover from the Buyer any part of the Deposit which is not paid when required as a liquidated debt.

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 must be paid by the party receiving the Deposit.

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 (if any), unless the termination is due to the Seller's default, misrepresentation 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 directs.
- (2) Despite any other provision of this contract, reference to a "Bank cheque" in clause 2.4(1):
 - (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.

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) and 2.5(6), Outgoings for periods including the Settlement Date must be adjusted:
 - (a) for those paid, on the amount paid;
 - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
 - (c) for those not assessed:
 - (i) on the amount the relevant authority or the Body Corporate advises will be assessed (excluding any discount); or
 - (ii) 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 unimproved value for the Lot, on a notional unimproved value equal to:

Unimproved value of the Land under <i>Valuation of</i> <i>Land Act 1944</i>	x	Interest schedule lot entitlement of Lot Aggregate interest schedule lot entitlement
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- (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) to 2.5(10) inclusive.
- (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 any Special Contribution levied on or before the Contract Date. The Buyer is liable for any Special Contribution levied after the Contract Date.
- (14) 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.
- (15) The cost of Bank cheques payable at settlement:
- to the Seller or its mortgagee is the responsibility of the Buyer; and
 - to parties other than the Seller or its mortgagee are the responsibility of the Seller.

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:
- approval has not been obtained by the Finance Date and the contract is terminated; or
 - 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 terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

4. Building and Pest Inspection Report

- 4.1** This contract is conditional on the Buyer obtaining written building and pest reports on the Lot and the Building from the Inspector 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 may terminate this contract by notice to the Seller at any time before 5pm on the Inspection Date if an Inspector's report is unsatisfactory to the Buyer. The Buyer must act reasonably.
- 4.3** If the Buyer does not terminate this contract by 5pm on the Inspection Date, it will be treated as being satisfied with the building and pest reports it has obtained.
- 4.4** If requested by the Seller, the Buyer must give a copy of the relevant inspection report to the Seller without delay.
- 4.5** If required under the *Queensland Building Services Authority Act 1991*, the Inspector must hold a current licence under that Act.

5. Settlement

5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm 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

- In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
- (1) any instrument of title for the Lot required to register the transfer to the Buyer;
 - (2) unstamped Transfer Documents capable of immediate registration after stamping;
 - (3) keys, codes or devices in the Seller's possession or control for all locks and security systems on the Lot or the common property; and
 - (4) if there are Commercial Tenancies or Service Agreements:
 - (a) the Seller's copy of any Commercial Tenancy Documents or Service Agreement Documents;

- (b) 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
- (c) any notice required by law to transfer to the Buyer the Seller's interest in any Bond.

5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer:

- (1) the Seller's rights and obligations under the Commercial Tenancies;
- (2) guarantees and Bonds supporting the Commercial Tenancies;
- (3) the Seller's rights and obligations under the Service Agreements; and
- (4) manufacturers' warranties for the Included Chattels; 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 to the extent necessary to allow recovery of those arrears by the Seller.

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 the Improvements except for the Commercial Tenancies. Title to the Included Chattels passes at settlement.

5.8 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (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.

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, Commercial Tenancies and interests registered on the Plan.

7.3 Requisitions

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

7.4 Seller's Warranties and Statements

- (1) The Seller warrants that at settlement:
 - (a) it will be the registered owner of an estate in fee simple in the Lot and will own the rest of the Property;
 - (b) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date);
 - (c) there will be no valid notice or order by any competent authority or court requiring work to be done or money spent in relation to the Property or common property for the Scheme or any scheme of which the Scheme is a subsidiary; and
 - (d) there will be no unsatisfied judgement, order or writ affecting the Property.
- (2) 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;

- (d) the community management statement recorded for the Scheme contains details of all allocations that affect the Lot or the registered owner of the Lot; and
- (e) the Additional Body Corporate Information is correct (if completed).

- (3) If a warranty in clause 7.4(1) is not correct, the Buyer may do any or all of the following:

- (a) terminate this contract by notice to the Seller, if it has not already settled; or
- (b) affirm this contract and, subject to clause 7.4(4), claim compensation including damages.

- (4) If a warranty in clause 7.4(1)(c) is not correct, the Buyer may only claim compensation including damages under clause 7.4(3) if the relevant notice or order is issued before the Contract Date.

- (5) If:

- (a) a warranty in clause 7.4(2) is not correct; 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 within 14 days after the Contract Date but may not claim damages or compensation.

- (6) Clauses 7.4(3), 7.4(4) and 7.4(5) do not restrict any 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 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.

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 Notices under Building Act 1975

The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under:

- (1) sections 21 or 22 of the *Building Act 1975*; or
- (2) sections 4.3.9 or 4.3.11 of the *Integrated Planning Act 1997*.

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 road or railway or locate a road or railway through 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; or
 - (e) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
 and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given 2 Business Days before the Settlement Date.
- (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 relating to the Lot or the Land; and
 - (b) apply for a certificate of currency of the Body Corporate's insurance from any insurer.

7.8 Dividing Fences

The Seller need not contribute to the cost of construction of any dividing fence between the Lot and any adjoining land owned by the Seller. The Buyer waives any right it may have to claim contribution from the Seller.

8. Rights 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 Use of Property

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.

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 of the Body Corporate passed to record a new community management statement, 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

Before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property; and
- (2) further copies or details if those previously given cease to be complete and accurate.

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.

9. Buyer's Default

9.1 Seller May Affirm or Terminate

If the Buyer fails to comply with any provision of this contract, the Seller 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 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) keep the Deposit and interest earned on its investment;
- (3) sue the Buyer for damages;
- (4) resell the Property.

9.4 Resale

- (1) The Seller may recover from the Buyer as liquidated damages:
 - (a) any deficiency in price on a resale; and
 - (b) its expenses connected with this contract, 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.

9.5 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 a solicitor and own client basis.

9.6 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.
- (3) Any judgement for money payable under this contract will bear interest from the date of judgement to the date of payment and the provisions of this clause 9.6 apply to calculation of that interest.

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* or the *Retail Shop Leases Act 1984* ("Superseded Act"):
 - (a) as far as the Seller is aware the Seller has complied with the *Retail Shop Leases Act 1994* or the Superseded Act 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* or the Superseded Act 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 section 43 of the *Retail Shop Leases Act 1994* or equivalent section of the Superseded Act and there are no circumstances existing to the Seller's knowledge which might give rise to a claim for compensation.

10.4 Exceptions

Exceptions to the Seller's warranties in clause 10.3 must be disclosed either in the special conditions or an annexure to this contract.

10.5 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.

10.6 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 10.6(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 10.6, the Buyer will be treated as having accepted the Commercial Tenancies and all matters referred to in the Commercial Tenancy Documents.

10.7 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 may 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 the Settlement Date.

10.8 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.

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 Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

12.3 Duty

The Buyer must pay all duty on this contract.

12.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
 - (a) delivered or posted to the other party or its solicitor; or
 - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) 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.

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 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 each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) 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.